EUROPEAN COMMISSION
Directorate General Internal Market and Services

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE
Company law, corporate governance and financial crime

FEEDBACK STATEMENT

SUMMARY OF RESPONSES TO COMMISSION GREEN PAPER

ON

CORPORATE GOVERNANCE IN FINANCIAL INSTITUTIONS

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.
Office: SPA 2 - 1/103. Telephone: direct line (32-2) 2986529.

1. GENERAL REMARKS ON CONSULTATION PROCEDURE AND FEEDBACK

On 2nd June 2010, the European Commission launched a wide-ranging public consultation on corporate governance in financial institutions[1].

The scale of the recent financial crisis led governments around the world to question the effective strength of financial institutions and the suitability of their regulatory and supervisory systems to deal with financial innovation in a globalised world. The massive injection of public funding in the US and Europe was accompanied by a strong political will to learn the lessons of the financial crisis in all its dimensions to prevent such a situation happening again in the future.

Although corporate governance did not directly cause the crisis, the lack of effective control mechanisms contributed to excessive risk-taking on the part of financial institutions. The crisis revealed that boards of directors, like supervisory authorities, rarely comprehended either the nature or scale of the risks they were facing. In many cases, the shareholders did not properly perform their role as owners of the companies. Consequently, the Commission decided to address the fundamental question of whether the existing corporate governance regime is deficient as far as financial institutions are concerned and to seek views on possible ways to address the deficiencies.

The issues on which the Commission invited views and evidence included:

- **Functioning of boards and their role in risk oversight:** The consultation invited views on how to improve time commitment, experience and diversity of board members and their challenge of management decisions, risk oversight and accountability of boards for risk issues, boards' cooperation with supervisors and how to encourage boards to take into account interests of depositors and other stakeholders of financial institutions.

- **Governance of risk management function:** The consultation invited views on how to improve the standing and authority of the risk management functions and establish a risk culture at all levels of financial institutions and how to improve information flow on risk from risk management to the board.

- **Supervisory authorities:** The consultation invited views on the enhancement of the supervisory role with regard to corporate governance mechanisms, including the eligibility criteria of board members and boards' performance.

- **External auditors:** The consultation asked whether the cooperation between external auditors and supervisory authorities should be enhanced and what should be the role of external auditors as regards information on risk.

- **Shareholders:** The consultation invited views on shareholder behaviour as regards risk-taking by financial institutions and on the possible ways to improve shareholder engagement.

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[1] Green Paper on corporate governance in financial institutions and remuneration policies, COM(2010) 284 final

- **Enforcement:** The consultation asked whether accountability and civil and criminal liability of board members should be strengthened.

- **Remuneration:** The consultation invited views on the need for possible further regulation of remuneration in financial institutions and in listed companies.

- **Conflicts of interest:** The consultation invited views on whether there is a need to address at European level the question of different rules on conflicts of interest and on possible content of these rules.

The deadline for responses to this consultation paper was 1st September 2010. The following contributions have been received: 178 from organisations, 8 from citizens, and 28 from public authorities.

Responses to the consultation highlighted the following messages:

- The **respondents agree** with the analysis in the Green Paper of the weaknesses in corporate governance in financial institutions. They support the Commission's goal of promoting effective corporate governance as well as the policy intent underlying the principles articulated in the Green Paper. The respondents also support **a more effective supervision** of the implementation by financial institutions of principles on good corporate governance.

- Financial institutions recognise that effective governance makes a meaningful difference in corporate performance and are currently **reviewing their practices**. Although many respondents highlight that certain failures in corporate governance in financial institutions were to a large extent due to a lack of effective implementation of existing rules**,** a number of respondents think that **regulatory framework could be improved** further.

- **Clear definition and division of responsibilities is fundamental**. For a number of respondents, more clarity is needed as regards respective duties of different bodies within the financial institution. Multiplication of controls and procedures should not lead to a confusion of which body is finally responsible for the decision-making and the overall governance of the financial institution

- A number of respondents think that any future proposals of the Commission should **be principle-based and proportionate** in order to take account the differences in business models of financial institutions, the nature of their activity, their size, complexity, legal form and different corporate governance systems and arrangements.

- Many respondents are of the opinion that future action at European level should focus on **desired outcomes** and the detailed implementation of the principles could be dealt with at national level through legislation, supervisory review, increased transparency or codes of best practice with "comply or explain" approach.

- **Insurance companies and UCITS[2] managers** in particular mentioned the recent reform of internal governance in insurance and in asset management sectors and

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[2] Undertakings for Collective Investment in Tradable Securities

called on the Commission to take this into account in its reform of corporate governance in financial institutions.

2. OVERVIEW OF RESPONSES TO THE CONSULTATION

The consultation was launched on 2nd June 2010 and closed on 1st September 2010. Responses were invited from all interested parties including public authorities, financial services industry, investor community, law firms, audit and accounting firms, academics, trade unions, citizens and civil society in general. 214 answers were received from a wide range of professional representatives, citizens and public authorities.

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

Figure 2 provides a more detailed presentation of the status of organisational respondents, broken down into 7 categories: financial services industry, investor community (including asset managers), audit and accounting firms, non-financial and cross-sector professional organisations, law firms, employee representatives and civil society (including bodies promoting good corporate governance).

Figure 4 lists the 214 answers received according to their nationality: 202 responses were received from EU-domiciled organisations or European associations representing members from different Member States, 6 answers were received from non-EU domiciled organisations (US, Norway and Ukraine) and 6 answers from international associations.

A list of all the organisations, citizens and public authorities, who have accepted that their answers to the consultation be published, is attached in annex 1.

Figure 1:

Organisations	**178**	**83%**
Public Authorities	**28**	**13%**
Citizens	**8**	**4%**
Total Contributions	**214**	**100%**

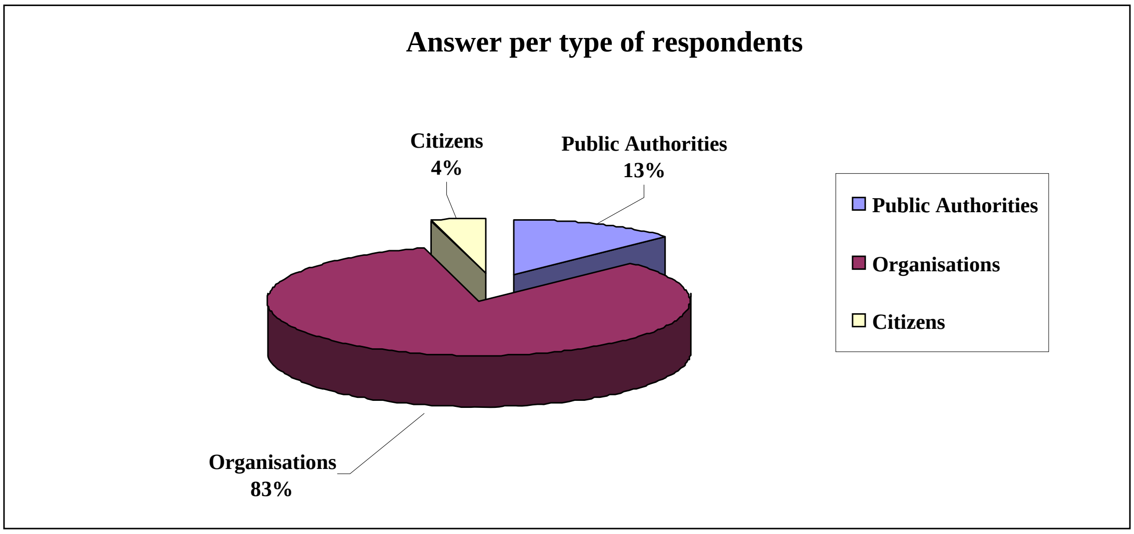


Figure 2:

For the purposes of this feedback statement, answers from respondents have been classified into 8 categories: financial services industry (including banks, insurance companies and financial markets), investor community (including investors, proxy voting agencies, asset managers), non-financial and cross-sector organisations (including professional chambers and associations and one pharmaceutical company), audit and accounting firms, law firms, employee representatives and civil society (including organisations promoting good corporate governance).

FINANCIAL SERVICES INDUSTRY	**55**	**31%**
INVESTOR COMMUNITY	**45**	**25%**
NON-FINANCIAL AND CROSS-SECTOR ORGANISATIONS	**24**	**14%**
AUDIT AND ACCOUNTING FIRMS	**22**	**12%**
CIVIL SOCIETY	**19**	**10%**
LAW FIRMS	**7**	**4%**
EMPLOYEE REPRESENTATIVES	**7**	**4%**
TOTAL	**178**	**100%**

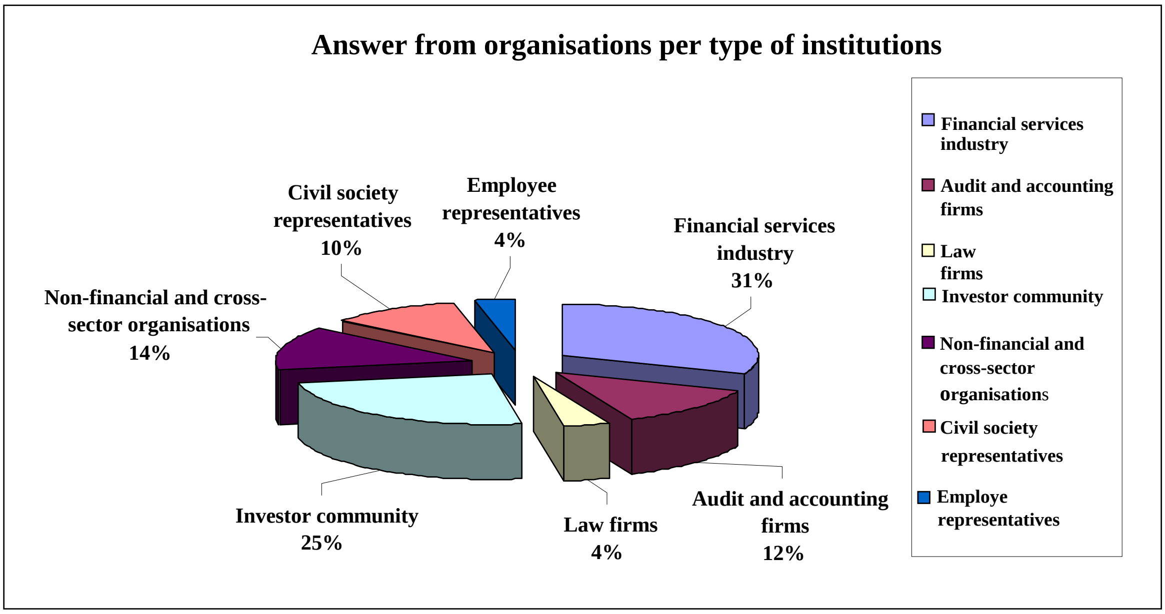
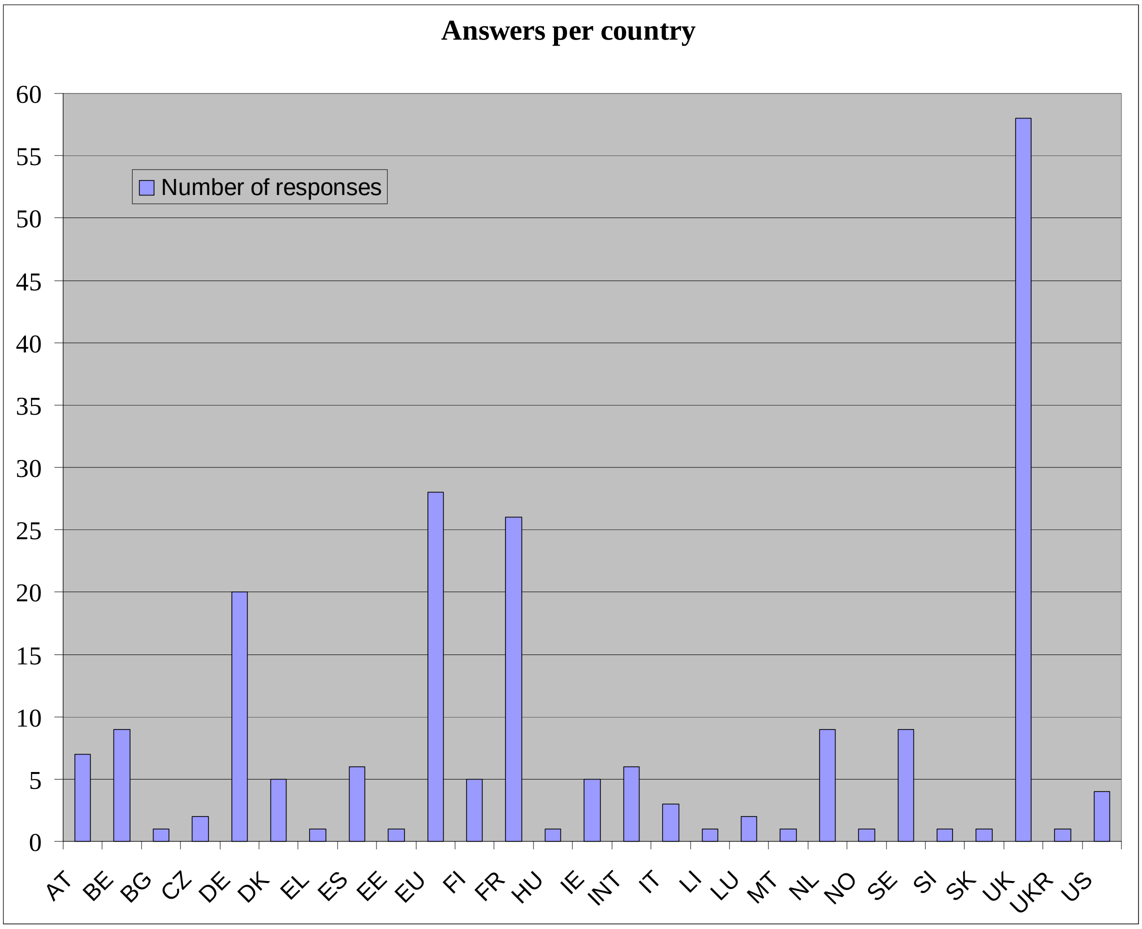


Figure 3:

List of the answers received according to their nationality.

Country		Country		Country	
AT	7	FI	5	SI	1
BE	9	FR	26	SK	1
BG	1	HU	1	UK	58
CZ	2	IE	5	**Sub-total**	**202**
DE	20	IT	3	UKR	1
DK	5	LI	1	US	4
EL	1	LU	2	NO	1
ES	6	MT	1	INT[3]	6
ET	1	NL	9		
EU[4]	28	SE	9	**Total**	**214**



[3] Responses submitted by international associations

[4] Responses submitted by European associations

3. DETAILED ANALYSIS OF RESPONSES

The feedback statement presents a broad summary of responses to each of the 38 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 commentaries to supplement or nuance their 'yes/no' answers. The explanations have been grouped under a number of sub-headings to enable a more detailed analysis of the respondents' views.

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.

It also should be noted that during the analysis, all responses were given equal weight. Consequently, any individual respondent has the same impact on the result of the consultation as a public authority or an organisation. In addition, 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 1.1

Should the number of boards on which a director may sit be limited (for example, no more than three at once)?

Whilst almost all respondents that provided an answer to this question agree that directors should commit sufficient time to their duties, a large majority consider a general rule on limitation of the number of boards on which a director may sit as inappropriate. The main reason for this being that such a limitation would be too arbitrary and inflexible, and would not allow to take account of the situation of each particular financial institution and individual circumstances of each director. Moreover, such a limitation would not in fact guarantee that director will dedicate enough time for his position.

<u>The majority of respondents suggested the following alternatives</u>:

Instead of a strict limitation of the number of mandates, there should be a general principle that directors devote sufficient time to their duties in a financial institution. The implementation of this general principle by financial institutions should be subject to monitoring by shareholders and supervisory authorities. A limitation of mandates may be envisaged as best practice with a "comply or explain" approach.

The expected time commitment should be defined in a letter of appointment for each director. All mandates held by each individual director should be publicly disclosed.

QUESTION 1.2

Should combining the functions of chairman of the board of directors and chief executive officer be prohibited in financial institutions?

A majority of respondents that provided an answer to this question favour a mandatory prohibition on cumulating the functions of Chairman and of chief executive officer. In their view, combining both functions disregards the divergence of duties and capacities and concentrates an unwarranted amount of power and dominance in the hands of one person. A number of respondents indicated that in their jurisdiction it was already not possible to cumulate both functions. Some respondents considered, however, that certain exceptions would be necessary to accommodate specific situations, especially for small financial institutions and temporary cumulation of functions in particular circumstances.

Those respondents that opposed any prohibition considered that there was no conclusive evidence that financial institutions where the functions of Chairman and CEO were performed by different individuals performed better or have better withstood the crisis than those financial institutions where the two functions were performed by the same person.

QUESTION 1.3

Should recruitment policies specify the duties and profile of directors, including the chairman, ensure that directors have adequate skills, and ensure that the composition of the board of directors is suitably diverse? If so, how?

The majority of the respondents that provided an answer to this question consider that recruitment policies should specify the duties and the profile of the directors and ensure that directors have adequate skills. A large number of respondents in favour of this requirement consider however that the specific content of such recruitment policies should not be laid down in legislation but be left to financial institutions to decide upon according to their needs. It is also suggested by a number of respondents that a general profile for all board members should be defined in the recruitment policy and a specific profile should be drawn for each particular vacancy.

Among those respondents who were not in favour of recruitment policies specifying the duties and the profile of directors, some thought that it was not possible to define in advance the detailed profile required for each specific candidate. Others considered that shareholders' freedom to nominate board members should not be restricted. Cooperative banks and insurance companies in particular stressed that where directors were democratically elected by the general assembly of members, it was difficult to require in advance that candidates possess specific skills or profile.

Almost all respondents agreed that induction and continuous training of board members are essential.

QUESTION 1.4

Do you agree that including more women and individuals with different backgrounds in the board of directors could improve the functioning and efficiency of boards of directors?

The vast majority of respondents that provided an answer to this question agree that increased diversity in boards avoids "group think" and strengthens challenge within boards. Some respondents are in favour of imposing quotas on the presence of women on boards. Many respondents consider, however, that diversity should not be pursued at the expense of knowledge and expertise. A board member should be selected taking account of a broad set of criteria, including merit, professional qualifications, experience, personal qualities of the candidate and diversity.

Some respondents also mentioned that diversity should not be limited to gender but it should also include age and cultural background and reflect geographical presence of the financial institution.

Certain respondents consider that diversity can be promoted through different means: codes of best practice with "comply or explain" approach, disclosure of board composition with regard to diversity criteria, benchmarking of existing practices.

Respondents who disagreed that including more women and individuals with different backgrounds in the board of directors could improve the functioning and efficiency of boards of directors considered that there was insufficient evidence that more diverse boards behaved better or that the different nationalities have different behaviours.

QUESTION 1.5

Should a compulsory evaluation of the functioning of the board of directors, carried out by an external evaluator, be put in place? Should the result of this evaluation be made available to supervisory authorities and shareholders?

The majority of the respondents that provided an answer to this question consider that evaluation of the board performance carried out by an independent expert could be a useful tool to assess the board's performance. There is a general agreement that it should at least be best practice. However, a number of respondents mentioned that there are for the time being too few external evaluators of sufficiently good quality to make the external evaluation mandatory for each financial institution. Some respondents suggested encouraging the professionalisation of external evaluation and the development of tools and methodologies for independent board evaluation.

On the second part of the question, a slight majority of the respondents were in favour of disclosing the main conclusions of the evaluation to the supervisor, but not the full report. There is also a strong preference not to disclose the results to the shareholders. The main argument for this is that if the results of the evaluation were publicly disclosed, it would inhibit directors' openness to the evaluation process and significantly undermine its value.

QUESTIONS 1.6, 1.7 & 1.8

Should it be compulsory to set up a risk committee within the board of directors and establish rules regarding the composition and functioning of this committee? Should it be compulsory for one or more members of the audit committee to be part of the risk committee and vice versa? Should the chairman of the risk committee report to the general meeting?

A number of respondents think that separate risk committees are good practice, especially for large, systemically important financial institutions. However, they consider that such requirement should be proportionate and care should be taken to avoid diluting the responsibilities of the whole board for risk oversight.

On the membership of audit and risk committees, many respondents consider cross-participation as best practice where two different committees exist. Some respondents, however, consider this unnecessary, as both committees advise and report to the board as a whole. Others see the cross-participation as one of different tools in ensuring communication between the two committees and think that it should be left to board to decide on specific means to ensure such communication. .

There is a strong opposition to the suggestion that chairman of the risk committee should report directly to the annual general meeting of shareholders. The majority of respondents consider that the board as a whole is accountable to shareholders and should report to the annual general meeting and not an individual director. However, respondents expressed general agreement that the chairman of risk committee should be available to answer questions. Some respondents also suggested that a report from the chairman of risk committee could be part of the annual report.

QUESTIONS 1.9, 1.10 & 1.11

What should be the role of the board of directors in a financial institution's risk profile and strategy? Should a risk control declaration be put in place and published? Should an approval procedure be established for the board of directors to approve new financial products?

All respondents that provided an answer to these questions agree that the board should approve the strategy of the financial institution and the nature and the extent of risks the company is willing to take with regard to its strategic objectives. The board should also be responsible for the oversight of the implementation of risk strategy by executive management.

Regarding risk statement, the views of the respondents are split. Almost half of respondents (mainly investors) that provided an answer think that a short and clearly understandable report informing shareholders on risk exposures, risk strategy and tolerance would help investors to form a comprehensive view of risk appetite of the financial institution, if it would not become a boiler plate declaration. In their opinion it would also contribute to raise board's awareness of risk issues.

The respondents (mainly financial services industry) who are against putting in place such risk statement think that existing European legislation on credit institutions and insurance companies already requires financial institutions to disclose sufficient information on risk. Furthermore, French, German and UK respondents indicated that their national legislation or corporate governance codes require extensive risk disclosures.

On the board's approval of new financial products, some respondents that provided an answer consider a systematic approval by board of new products as inappropriate, as it would entail involvement of boards in operational issues, which is the responsibility of executive management. However, other respondents consider that board could approve products that have a significant impact on the strategy and the risk profile of the financial institution, as it would be part of global risk strategy. There is also a consensus that there should be a procedure with financial institutions to approve new products and that boards should be responsible for ensuring that this procedure is adequate and correctly implemented.

QUESTION 1.12

Should an obligation be established for the board of directors to inform the supervisory authorities of any material risks they are aware of?

The majority of the respondents (almost all financial services industry and the majority of investors) that provided an answer to this question consider such additional obligation as unnecessary. In their view, existing European and national legislation already require a high degree of communication between supervisory authorities and the boards or the executive management, which would cover information about material risks. However, some investors, audit and law firms, as well as certain public authorities, citizens and civil society representatives are in favour of introducing a more specific obligation.

QUESTION 1.13

Should a specific duty be established for the board of directors to take into account the interests of depositors and other stakeholders during the decision-making procedure ('duty of care')?

Large majority of respondents that provided an answer to this question are not in favour of creating a specific duty of care with regard to specific stakeholders. They consider that the primary fiduciary duty of boards is to their shareholders. However, there seems to be a general agreement among all respondents that the boards should act in the best interest of the financial institution, which includes interests of different stakeholders. A number of respondents indicated that such duty to act in best interests of the company already exits in their jurisdictions.

QUESTION 2.1

How can the status of the chief risk officer be enhanced? Should the status of the chief risk officer be at least equivalent to that of the chief financial officer?

All respondents that provided an answer to this question agree that chief risk officer should have high status and authority, be independent from operational and business units and have close relationship with the board. But, according to the majority of opinions, the exact hierarchical status of the chief risk officer should not be prescribed and should be left to each financial institution to decide, taking into account the principle of proportionality.

The main suggestions as to different ways to enhance the status and the authority of the chief risk officer include the following: chief risk officer should be a member of the board or of the management board; chief risk officer should be able to report directly to the board or to the risk committee; remuneration and removal from office of the chief risk officer should be subject to the board's approval; chief risk officer should be approved by the supervisor.

Some respondents, in particular cooperative banks, mentioned that the position of chief risk officer does not exist in all financial institutions. They stressed the importance of a proportionate approach that would allow small financial institutions not to have a separate and independent position of the chief risk officer.

Respondents from the insurance industry indicated that there was no need to strengthen further the status of the risk management for insurance companies as this issue is already dealt with in Solvency II[5].

QUESTION 2.2 & 2.3

How can the communication system between the risk management function and the board of directors be improved? Should a procedure for referring conflicts/problems to the hierarchy for resolution be set up? Should the chief risk officer be able to report directly to the board of directors, including the risk committee?

Whilst all respondents that provided an answer to these questions agree that the board needs to receive timely and accurate information on risk, the predominant view is that setting up a formal escalation procedure for conflicts resolution is not necessary. But the majority consider that the chief risk officer should either have a duty to report directly to the board or to the risk committee on a regular basis or should be able to do so if needed. Some of the respondents also think that the position of the chief risk officer might be strengthened by periodically attending board meetings or meetings of the risk committee.

However, some respondents from jurisdictions with mandatory two-tier boards indicate that in their system only the management board has the competence to report directly to the supervisory board, not the chief risk officer who can report to the management board only.

Certain institutional investors indicated that shareholders were not sufficiently informed about risk issues and suggested that communication on risk matters should also be improved towards shareholders.

Respondents from the insurance industry indicated that the communication on risk matters from risk management function to the board will be sufficiently dealt with under Solvency II, where the board has to have effective insight into risk management.

QUESTION 2.4

Should IT tools be upgraded in order to improve the quality and speed at which information concerning significant risks is transmitted to the board of directors?

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5 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

Whilst all respondents that provided an answer to this question agree that information technologies should enable boards and executive management to receive timely and accurate information on risk, the majority consider that the decision to upgrade or not these technologies should be left to each financial institution to decide upon. For many respondents, correctly identifying the type of information the board requires to adequately fulfil its duties and the capacity of the board to understand the information provided to it are crucial.

Some respondents also indicated that systematic upgrading of information tools would entail huge costs and would be disproportionate for small financial institutions.

A number of respondents suggest that it could be a task for supervisors to oversee that information tools to transmit information on risk are appropriate for each specific financial institution.

QUESTION 2.5

Should executives be required to approve a report on the adequacy of internal control systems?

Some respondents did not give a specific opinion on the subject because the content of the report on the adequacy of internal control system was not clear to them.

But the majority of the respondents that provided an answer to this question are opposed to the requirement for executives to approve such a report. A number of respondents consider that the board as a whole should approve a report on the adequacy of internal control systems as opposed to the executive management.

Others think that such approval would not have any added value compared to already existing requirements in different national or European legislations or corporate governance codes, or would be too formalistic and disproportionate. In particular, a majority of the respondents were opposed to a Sarbanes - Oxley[6] type declaration as they thought it was too burdensome and also did not prevent the crisis in US.

Among the respondents who were in favour of the executives approving a report on the adequacy of internal control systems, certain French, German and Spanish respondents indicated that such an obligation already existed in their national legislation or in a corporate governance code and should become a standard at European level. Respondents from UK were particularly in favour of a Turnbull[7] type declaration.

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[6] The Sarbanes-Oxley Act adopted in 2002 in US makes reporting on internal controls mandatory for SEC registrants and their independent auditors. Section 302 of the Act entitled "Corporate Responsibility for Financial Reports" establishes management responsibility for internal controls and requires management to evaluate the effectiveness of internal controls. Section 404 of the Act directs the SEC to adopt rules requiring annual reports of public companies to include an assessment, as of the end of the fiscal year, of the effectiveness of internal controls and procedures for financial reporting. Section 404 also requires the company's independent auditors to attest to and report on management's assessment.

[7] The Turnbull guidance sets out best practice on internal control for UK listed companies. It was initially published in 1999 and subsequently reviewed in 2005. Under this guidance, the board should in particular provide a statement on internal control which should, *inter alia*, include an

QUESTION 3.1

Should cooperation between external auditors and supervisory authorities be deepened? If so, how?

The majority of respondents that provided an answer to this question, in particular nearly all public authorities, think that there is a need to deepen the cooperation between auditors and supervisors. In their view, this could be achieved through a more frequent communication and a two-way dialogue, for example on macro-economic issues; trilateral meetings between supervisors, auditors and financial institutions; regular meetings at national or at European level of professional bodies of auditors with supervisory authorities; additional reporting requirements on some specific issues.

Those respondents which are opposed to enhanced cooperation between external auditors and supervisory authorities consider that existing national and European requirements sufficiently regulate the duty of auditors to report to supervisors. In their view, any the primary duty of auditors is to report to shareholders. Any additional cooperation could damage the relationship of trust between auditors and the financial institution. Those respondents also warn against mixing the roles of supervisors and auditors as they have different missions.

QUESTION 3.2

Should their duty of information towards the board of directors and/or supervisory authorities on possible serious matters discovered in the performance of their duties be increased?

A number of respondents (including financial services industry, investors, audit and accounting firms and certain public authorities) that provided an answer to this question are not in favour of increasing the duty of information of external auditors. They consider that the existing rules at national or European level on reporting by external auditors of serious matters to boards and supervisors are sufficient. However, other respondents think that there is a need to analyse how these rules were applied in practice, although there is not evidence showing that they have been applied. Several respondents nevertheless think that further guidance is needed as to the circumstances that external auditor should report to supervisors, on the nature of information that should be provided and on the procedures.

Those respondents in favour of the increased duty of information (mainly public authorities, certain financial institutions, investors and audit firms, civil society representatives and citizens), think that the duty to report could be widened, for example to encompass weaknesses in internal control.

QUESTION 3.3

Should external auditors' control be extended to risk-related financial information?

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acknowledgement by the board that it is responsible for the company's system of internal control and for reviewing its effectiveness.

A majority of respondents that provided an answer to this question were strongly opposed to extending the duty of external auditors to control risk-related financial information. In their view, current audit requirements contained in their national legislation and in IFRS already encompass information related to risk where auditors need to be satisfied that this information is consistent with financial and accounting information. They consider that auditors' control should not be further extended. Certain respondents also think that auditors do not have appropriate tools to audit non-financial information on risk and that the control of such information should be left to the board and to the supervisors.

Other respondents (mainly public authorities, certain investors, audit and accounting firms and civil society representatives) consider that it is desirable for auditors to validate a greater range of information which is relevant for shareholders.

Some respondents were not opposed to extend auditors' control to risk-related information but considered that the scope of such audit should be defined first and further thought should be given to the ability of auditors to express a professional opinion on the internal control systems of banks and other risk-related issues.

QUESTIONS 4.1 & 4.2

Should the role of supervisory authorities in the internal governance of financial institutions be redefined and strengthened? Should supervisory authorities be given the power and duty to check the correct functioning of the board of directors and the risk management function? How can this be put into practice?

Almost all respondents that provided an answer to this question agree that supervisory authorities, in course of the periodic supervisory review, should be able to challenge the efficiency of internal governance structures and monitor whether these structures could have a negative impact on financial stability. Only few respondents are opposed to any role of supervisors in the internal governance.

However, views are split as to the need to enhance the existing powers of the supervisors. A slight majority of the respondents that provided an answer consider that the existing national and European rules are sufficient and that there is no need to strengthen further the role of supervisors in corporate governance.

A number of respondents think, however, that supervisory authorities should have more powers to control the performance of the boards and risk management and to sanction any shortcomings in internal governance of financial institutions. In particular, many respondents are of the view that supervisors should give closer attention to the balance in the board in relation to risk strategy and satisfy themselves that the board is able to exercise efficiently its oversight function. Some respondents, especially from UK, indicated that in their jurisdictions supervisors have recently been given increased powers to monitor internal governance of financial institutions.

Nevertheless, there is a consensus that boards and shareholders of the financial institution should be primary responsible for internal governance arrangements. Cooperative banks in particular stressed that the general assembly of members should remain at the heart of governance and internal control mechanism. Nearly all respondents agree that any enhancement of supervisory powers should not result in supervisory authorities taking management decisions.

QUESTION 4.3

Should the eligibility criteria ('fit and proper test') be extended to cover the technical and professional skills, as well as the individual qualities, of future directors? How can this be achieved in practice?

The majority of respondents that provided an answer to this question think that the fit and proper test should be extended to include technical and professional skills as well as individual qualities of future members of the board.

Many respondents think that boards should have expertise and knowledge collectively and should be able to challenge management as a team, instead of each candidate possessing all set of specific skills and qualities. Some respondents mention the difficulty to find an appropriate test for individual qualities, the appreciation of which would always be subjective. A number of respondents emphasise that increased competence should not be detrimental to independence and diversity of board members.

Regarding the ways to apply the enhanced fit and proper test, a number of respondents suggest that supervisors should conduct periodic interviews with board members, attend as observers board and sub-committee meetings. They site as example the UK approved persons regime[8].

Those respondents that are opposed to extend the fit and proper test to professional skills and individual qualities of candidates think that supervisors already have sufficient powers to check the composition of the board, are not better suited than shareholders to set the board members and thus should not be excessively intrusive in the nomination process. One respondent considered that excessive intervention of supervisors could result in an undue transfer of liability to the supervisor.

QUESTION 5.1

Should disclosure of institutional investors[9] voting practices and policies be compulsory? How often?

The vast majority of respondents that provided an answer to this question are in favour of mandatory disclosure of voting policies and records by institutional investors

They consider that such disclosure would have a positive impact on the awareness of investors, optimise investment decision of ultimate investors, facilitate issuers' dialogue with investors and encourage shareholder engagement. However, certain respondents are relatively cautious with regard to public disclosure of voting records for confidentiality reasons.

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[8] In 2009 Financial Services Authority in UK tightened its approved persons regime for Significant Influence controlled functions. FSA increased the number of controlled function categories for which approval is required. To approve a particular person, the FSA needs to be satisfied that he is a fit and proper person to perform the function to which the application relates. To this end the FSA has the power to conduct interviews in order to assess competence and capability of the candidate for the role.

[9] Institutional investors are considered to be professional investors which invest on behalf of or for the benefit of beneficiaries, including but not limited to pension funds, hedge funds, insurance companies and banks

A number of respondents think that the disclosure should be done at least on an annual basis, with voting records being disclosed after each general meeting of the invested company. There are also some voices in favour of half-yearly or even quarterly disclosure.

Those respondents which are opposed to disclosure by institutional investors of their voting policies and records either feared that such disclosure obligation for a specific category of shareholders would be contrary to the principle of equal treatment or thought that it should be left for each institutional investor to decide on whether to disclose or not its voting policy.

QUESTION 5.2

Should institutional investors be obliged to adhere to a code of best practice (national or international) such as, for example, the code of the International Corporate Governance Network (ICGN)? This code requires signatories to develop and publish their investment and voting policies, to take measures to avoid conflicts of interest and to use their voting rights in a responsible way.

The majority of respondents that provided an answer to this question think that institutional investors should adhere to a code of best practice, whether to national, European or international code, at least on a "comply or explain" basis. A number of respondents consider the UK Stewardship Code as being a model for investor codes of best practice. Some respondents are of the opinion that there is a need either for a European code of best practice or for a common standard at European level with mutual recognition of national stewardship codes.

One respondent thinks that self-regulatory codices are not a viable means to assure the quality of corporate governance. In his view, responsibility of external control should lie with the supervisory authorities and external auditors.

QUESTION 5.3

Should the identification of shareholders be facilitated in order to encourage dialogue between companies and their shareholders and reduce the risk of abuse connected to 'empty voting'?

The majority of respondents that provided an answer to this question support mechanisms that would enable investee companies to identify efficiently their shareholders. Many respondents would be in favour of greater transparency of the shareholders' register and of a uniform binding rule at European level on disclosure of nominees and beneficial owners of shares. French and UK respondents cite their national legislation as an example. Those respondents that are not in favour of enhanced identification of shareholders think that identification of shareholders is already ensured in other instruments, such as the Transparency Directive[10].

[10] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

With regard to empty voting, some respondents would be in favour of greater disclosure of stock lending practices. However, the majority of respondents do not think that empty voting would be countered by better identification of shareholders, as, in their view, empty voting is linked to the record date issue.

QUESTION 5.4

Which other measures could encourage shareholders to engage in financial institutions' corporate governance?

There is a consensus among the respondents that provided an answer to this question that communication and dialogue between the shareholders and the invitee companies is essential. For that purpose, there is a need to reduce costs, remove legal obstacles and regulatory barriers that preclude shareholders to actively engage in companies. Many respondents underline the necessity to facilitate cross-border voting and would be in favour of regulating proxy voting agencies. Effective implementation of the Shareholder Right Directive is also seen as a step towards better involvement of shareholders, as well as improved disclosure of information on risk, strategy and other non-financial information. As regards sustainability and long-terms focus of investments, some respondents suggest greater disclosure of remuneration structures of asset managers, increased taxation of financial transactions to limit the portfolio turnover, actions to promote the awareness of shareholders as to the long-term engagement, incentives for shareholders to vote and hold their participation at long term.

QUESTIONS 6.1 & 6.2

Is it necessary to increase the accountability of members of the board of directors? Should the civil and criminal liability of directors be reinforced, bearing in mind that the rules governing criminal proceedings are not harmonised at European level?

The vast majority of respondents that provided an answer to these questions are opposed to any increase in civil and criminal liability of directors. The general view is that current rules impose sufficient liability on directors and their effective implementation should be studied first before any harmonisation is decided at European level. Many respondents underline that increased liability would not automatically result in better decisions by directors, could be detrimental to sound initiative and directors would discourage talented individual to apply for boards' membership. A number of respondents think that supervisors need to apply effectively the range of sanctions they already dispose of to make directors more accountable. Certain respondents are also in favour of annual re-election of board members, which in their view would contribute to enhance the directors' accountability to shareholders.

QUESTION 7.1

What could be the content and form, binding or non-binding, of possible additional measures at EU level on remuneration for directors of listed companies?

Nearly all respondents that provided an answer to this question agree that incentives for directors must be properly structured in order to encourage long-term and sustainable performance of companies. However, the vast majority is opposed to any additional legislative measures in this field as regards the structure of remuneration. They think that recently adopted European legislation, such as the amendment to the Capital Requirements Directive[11] and the Commission Recommendation on remuneration of directors in listed companies[12], sufficiently deal with such issues. Certain respondents would nevertheless welcome more transparency of remuneration policies of directors in listed companies as well as an advisory shareholder vote.

QUESTION 7.2 & 7.3

Do you consider that problems related to directors' stock options should be addressed? If so, how? Is it necessary to regulate at Community level, or even prohibit the granting of stock options? Whilst respecting Member States' competence where relevant, do you think that the favourable tax treatment of stock options and other similar remuneration existing in certain Member States helps encourage excessive risk-taking? If so, should this issue be discussed at EU level?

The vast majority of respondents who provided an answer to these questions think that stock options are a useful tool to align interest of directors with those of shareholders and should not be prohibited if properly structured in accordance with existing legislation. The only possible field for action at European level for some respondents could be the better disclosure of stock option payments and the shareholder advisory vote.

As regards taxation regime, the predominant view is that favourable taxation of stock options, where it exists, does not have any major impact on risk-taking behaviour of directors and thus should not be dealt with at European level.

QUESTION 7.4

Do you think that the role of shareholders, and also that of employees and their representatives, should be strengthened in establishing remuneration policy?

The majority of respondents who provided an answer to this question do not see a need to further strengthen the role of shareholders or employees in establishing remuneration policies. In their view, the existing European or national rules give already sufficient weight to shareholders and employees on remuneration issues.

Some respondents, predominantly investors and audit and accounting firms, favour however, an advisory or a binding vote of shareholders on remuneration of directors, which they think should be set up at European level.

Certain respondents, essentially employee representatives, would be in favour of a clear role of employees in remuneration committees and improved information of employees about remuneration of directors.

QUESTION 7.5

[11] Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re securitisations, and the supervisory review of remuneration policies.

[12] Commission Recommendation of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies.

What is your opinion of severance packages (so-called 'golden parachutes')? Is it necessary to regulate at Community level, or even prohibit the granting of such packages? If so, how? Should they be awarded only to remunerate effective performance of directors?

Whilst the majority of respondents that provided an answer to this question agree that pay, including severance packages, should award effective performance and not the failure, the majority of respondents that provided an answer to this question do not consider appropriate to prohibit severance packages or to further regulate them at European level. In their view, the award of severance packages should be the responsibility of boards and shareholders and should be decided on case by case basis.

QUESTIONS 7a & 7.6

Interested parties are also invited to express their views on whether additional measures are needed with regard to the structure and governance of remuneration policies in the financial services. If so, what could be the content of these measures?

Do you think that the variable component of remuneration in financial institutions which have received public funding should be reduced or suspended?

The vast majority of respondents that provided an answer to this question think that, in view of new rules on remuneration in credit institutions and investment firms introduced by CRD III, no additional measures are required at European level before the effects of the implementation of these new rules is carefully evaluated. As regards financial institutions having received public funding, the general view is that it should be left to each national competent authority to decide on case y case basis whether there is a need to reduce or suspend the variable remuneration for each specific financial institution. Many respondents indicate that in some cases it could be justified to pay some bonuses to attract new staff to rebuild the financial institution.

QUESTIONS 8.1 & 8.2

What could be the content of possible additional measures at EU level to reinforce the combating and prevention of conflicts of interest in the financial services sector? Do you agree with the view that, while taking into account the different existing legal and economic models, it is necessary to harmonise the content and detail of Community rules on conflicts of interest to ensure that the various financial institutions are subject to similar rules, in accordance with which they must apply the provisions of MiFID, the CRD, the UCITS Directive or Solvency 2?

Whilst some of the respondents think that no additional measure are needed at European level on prevention of conflicts of interest, the prevailing opinion is that there is a need for greater alignment of existing rules at European level. But the majority of the respondents agree that the specificities of different types of financial institutions and their business models should be taken into account.

The main suggestions as to the content of the possible measures are the following:

- formal written conflicts policy which should be disclosed in the annual report;

- public disclosure of existing conflicts of interest;

- harmonisation of the definition of "conflicts of interest";

- adherence to codes of ethics;

- reduce complexity of financial institutions;

- proper and documented division of responsibilities and segregation of duties;

A number of respondents also indicated that in their view conflicts of interest could arise in all type of companies and therefore should be regulated in general.

Annex 1.

- List of the public authorities that have participated in the consultation.

Austrian Financial Market Authority
Austrian Ministry of Finance
Autorité des marches financiers
Banco de España
CEIOPS
Central Bank of Ireland
Committee of European Banking Supervisors
Czech National Bank
Danish government
Dutch Ministry Finance
Financial Reporting Council
Finnish Financial Supervisory Authority
Finnish Ministry of Finance
French Ministry of Finance
German Bundesrat
German Bundestag
German Federal Government
Malta Financial Services Authority
Ministry of Finance of Estonia
Ministry of Finance of the Czech Republic
Secrétariat général de l'Autorité de contrôle prudentiel
Slovak Republic Government
Slovenian Ministry of Finance
Spanish Government
Swedish Ministry of Finance
Swedish Riksdag
UK Financial Supervisory Authority
UK Government

- List of the citizens which have participated in the consultation.

Centre for Inclusive Leadership
Nicolas Cuzacq, Katrin Deckert, Université Paris Est Créteil Val de Marne
Daniel Ferreira, Tom Kirchmaier, Daniel Metzger
Jim Stewart
Lieve Lowet
Miroslav Nedelchev
Peter Schellinck
Sabine de Bethune

- List of the organisations which have participated in the consultation.

AFG
Allianz
AMICE
APG
Association for Financial Markets in Europe
Association française des entreprises privées
Association française des marchés financiers

Association of British Insurers
Association of Chartered Certified Accountants
Associaton of Swedish Institutional Owners
Assogestioni
Austrian Bundesarbeiterkammer
Austrian Raiffeisenverband
Aviva
AXA Investment Managers
Banco Santander
Barclays
BDO
Belgian Financial Sector Federation
BlackRock
BNP Paribas
BPCE
British Bankers' Association
Building Societies Association
Bundessparte Bank und Versicherung
Bundesverband Investment und Asset Management
Bundesvereinigung der Deutschen Arbeitgeberverbände & Bundesverband der Deutschen Industrie
Businesseurope
Bvlaco
California Public Employees' Retirement Systems
CBI
CD&V
CEA
Central Chamber of Commerce of Finland
Centre for Corporate Governance, University College Dublin
CFA Institute
CFDT Banques
Chambre de Commerce et de l'Industrie
Chartered Accountants Ireland
Chartered Accountants of Scotland
CIPD
Compagnie nationale des commissaires aux comptes
Confederation of Finnish Industries
Confederation of Swedish Enterprise
Confederation of the Nordic Bank, Finance and Insurance Unions
Conseil des barreaux européens
Consejo General de Colegios de Economistas
Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili
Council of Institutional Investors
Creative Investment Research, Inc.
Crédit Agricole
Crédit Mutuel
Danish Bankers' Association
Danish Financial Sector Associations
Danish Shareholders Association
Deloitte
Deutsche Gewerkschaftsbund
Deutsche Industrie- und Handelskammertag
Deutsches Aktieninstitut
Die Fürungskräfte
DSW

Dutch Investors’ Association
EcoDa
EFAMA
Ernst and Young
Ethical Investment Research Services
Eumedion
Euroclear
EuroInvestors
European Assocation of Co-operative Banks
European Association of Public Banks
European Banking Federation
European Confederation of Institutes of Internal Auditing
European Federation for Retirement Provision
European Financial Services Round Table
European Issuers
European Network of Credit Unions
European Private Equity and Venture Capital Association
European Savings Bank Group
European Trade Union Confederation
European Union of Women
European Women Lawyers’ Assocation
European Womens' Lobby
Eurosif
F&C Investments
Fair Pensions
Fédération Bancaire Française
Fédération Française des Sociétés d'Assurance Mutuelles
Fédération Française des Sociétés d'Assurances
Federation of European Accountants
Federation of Finnish Financial Services
Financial Services Consumer Panel
Forsikring & Pension
Forum of European Asset Managers
GC100
Genworth Financial
German Insurance Association
Glass Lewis
GlaxoSmithKlein
GOODCORP
Governance for Owners
Grant Thornton International
Groupement des Entreprises Mutuelles d'Assurances
Groupement National de la Coopération
GUBERNA
Hedge Fund Standards Board
Hermes
HQB partners
HSBC
Hungarian Banking Association
ICAEW
ICMA Asset Management and Investors Council
ILAG
ING
Institut des Actuaires
Institut Luxembourgeois des Administrateurs

Institute for the Accountancy Profession in Sweden
Institute of Chartered Secretaries and Administrators
Institute of Directors
Institute of International Finance
Institute of Public Auditors in Germany
Institute of Risk Management
Institutional Shareholder Services
Instituto de Censores Jurados de Cuentas de España
International Bar Association
International Research Center of Banking & Corporate Governance (Ukraine)
International Underwriting Association
Inverco
Investment Management Association
KEPKA
KPMG Europe
KPMG France
Law Society of England and Wales and the City of London Law Society
Legal and General
Legal and General Investment Management
Linklaters
Lithuanian Investors
Local Authority Pension Fund Forum UK
London Stock Exchange Group
Mazars
Medef
NASDAQ OMX
National Association of Pension Funds UK
Nationwide Building Society
Nederlandse Vereniging van Banken
Nestor Advisors
Nordea
Norges Banks Investment Management
OPF&VB
Österreichischer Arbeitskreis für Corporate Governance
Pan European Insurance Forum
PIRC
PricewaterhouseCoopers
Proxinvest
Railpen Investments and Universities Superannuation Scheme
Regierungskommission Deutscher Corporate Governance Kodex
Royal Dutch Institute of Registered Accountants
RSA Insurance
Share Plan Lawyers group
SIFA
Societé Générale
Standard Chartered Bank
Standard Life
Swedish Bankers´ Association
Swedish Corporate Governance Board
The Association of Investment Companies
The Co-operative Asset Management
The Director´s Office
Tomorrow's Company
Towers Watson
Transparency International

Uni Europa Finance
Unicredit
Vereinigung der Bayerischen Wirtshaft
Wirtschaftskammer Österreich
Wirtschaftsprüferkammer
Wp net
Zentraler Kreditausschuss