

ROADMAP			
<b>TITLE OF THE INITIATIVE</b>	Enhancing the EU corporate governance framework		
<b>LEAD DG – RESPONSIBLE UNIT</b>	MARKT F2	<b>DATE OF ROADMAP</b>	02/2013
<b>This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</b>			

### A. Context and problem definition

<p>(1) What is the political context of the initiative?</p> <p>(2) How does it relate to past and possible future initiatives, and to other EU policies?</p> <p>(3) What ex-post analysis of existing policy has been carried out? What results are relevant for this initiative?</p>
<p>(1) The corporate governance framework for listed companies in the European Union is based to a large extent on soft law, namely corporate governance codes. While these corporate governance codes are adopted at national level, Directive 2006/46/EC requires that listed companies refer in their corporate governance statement to a code and that they report on their application of that code on a 'comply or explain' basis. This approach means that a company choosing to depart from a corporate governance code has to explain which parts of the corporate governance code it has departed from and the reasons for doing so. The advantage of this method is its flexibility as it allows companies to adapt their corporate governance practices to their specific situation (taking into consideration their size, shareholding structure and sectoral specificities).</p> <p>However, a study for the Commission published in 2009<sup>1</sup> revealed important shortcomings in applying the 'comply or explain' principle that reduce the efficiency of the EU's corporate governance framework and limit the system's usefulness. The study revealed in particular that in over 60% of cases where companies chose not to apply recommendations, they did not provide sufficient explanation.</p> <p>In some Member States a gradual improvement in this field can already be observed. In certain Member States, bodies responsible for the monitoring of corporate governance codes have issued additional guidance on the application of the 'comply or explain' principle. However, in order to ensure a coherent approach at EU level, further improvement could be achieved by producing adequate guidance at EU level.</p> <p>(2) This issue has been raised in the Green Paper on the EU corporate governance framework which was adopted on 5 April 2011 (COM(2011) 164 final). With more than 400 replies to the questions asked, this consultation provided the services with valuable input into their own analysis. The initiative has been announced in the Action Plan on European Company Law and Corporate Governance adopted by the Commission on 12 December 2012. It will form a package together with the planned revision of the shareholders' rights Directive (2007/36/EC) which aims in particular at encouraging greater shareholder engagement.</p> <p>(3) The above mentioned study on Monitoring and Enforcement Practices in Corporate Governance in the Member States has provided an evaluation of the functioning of the 'comply or explain' principle and has revealed considerable shortcomings.</p>
<p>What are the main problems which this initiative will address?</p>
<p>This initiative should improve the functioning of the 'comply or explain' approach within the EU corporate governance framework, and in particular address the problem of low quality of corporate governance explanations provided by some companies departing from corporate governance codes provisions.</p> <p>Currently, companies departing from corporate governance codes often provide no or insufficient explanations. This makes it difficult for investors to judge the appropriateness of the company's corporate governance arrangements and to assess whether the company has good reasons not to comply with a given arrangement.</p> <p>The advantage of the 'comply or explain' approach is its flexibility, as it allows companies to adapt their corporate governance arrangements to their specific needs. Companies may have very good reasons for non-compliance, however in this case they should be clearly indicated. Insufficient, boiler-plate or generic information do not allow assessing whether the company has good reasons for non-compliance.</p>
<p>Who will be affected by it?</p>
<p>Listed companies, investors, national bodies in charge of updating and monitoring the corporate governance codes (depending on Member States, these bodies are private or public). Small and medium listed companies will also be affected; however the initiative will offer sufficient flexibility which will allow for adaptation to the needs of small and medium companies.</p>

Is EU action justified on grounds of subsidiarity? Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? Can the EU achieve the objectives better?
Investment in capital markets takes place more and more on a cross-border basis, thus the growing importance of a coherent European framework for companies and investors. As the 'comply or explain' approach is the baseline principle of the EU corporate governance framework, its main features should be defined at EU level. Action from Member States alone is likely to result in different sets of rules, which may undermine or create new obstacles to the good functioning of the internal market.

## B. Objectives of the initiative

What are the main policy objectives?
This initiative aims at improving the functioning of the 'comply or explain' approach within the EU corporate governance framework and at enhancing the quality of corporate governance explanations provided by companies departing from corporate governance codes provisions. More specifically it should provide investors with better information in order to assess whether the deviations from best corporate governance practices are justified.
Do the objectives imply developing EU policy in new areas?
No. The initiative will build on existing rules in the field of corporate governance.

## C. Options

(1) What are the policy options (including exemptions/adapted regimes e.g. for SMEs) being considered? (2) What legislative or 'soft law' instruments could be considered? (3) How do the options respect the proportionality principle?
(1) Apart from the 'no action' option, envisaged policy options would involve providing more or less detailed guidance on the application of the 'comply or explain principle'. (2) The initiative could take form of a legislative instrument, namely amending Directive 78/660/EEC which contains rules on the corporate governance statement in its Article 46a. It could also take form of a Recommendation. (3) In the analysis of options due account will be given to the need to favour the least restrictive approach obtaining the same results.

## D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?
In the absence of EU action, the quality of 'comply or explain' is likely to improve only in a few Member States which take measures in that field. In addition, Member States are likely to adopt different requirements, resulting in divergent application of the 'comply or explain' approach across the EU. Detailed guidance would ensure a greater level of uniformity, but could leave less flexibility for Member States. A less detailed approach could have the advantage of ensuring an appropriate balance between the need of uniformity and the need of flexibility.
Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?
(i) There should be no impact on simplification (ii) Additional rules on the quality of corporate governance explanations might slightly increase the administrative burden for listed companies. No compliance or supervision burden has been identified. (iii) There should be no impact on relations with other countries. (iv) No specific implementation impact identified. (v) No transposition difficulties identified.
(1) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (2) When will the IA work start? (3) When will you set up the IA Steering Group and how often will it meet? (4) What DGs will be invited?

<p>(1-2) An IA will be prepared for the whole package (the revision of the shareholders' rights directive and the recommendation on enhancing the corporate governance framework) and the work started in Autumn 2012.</p> <p>(3) The IA Steering Group has been set and the first meeting will take place on the 28 February. Two more meetings will take place in April and June.</p> <p>(4) The DGs invited are SG, LS, ENTR, EMPL, ECFIN, COMP, SANCO, JUST and TAXUD.</p>
<p>(1) Is any option likely to have impacts on the EU budget above € 5m?</p> <p>(2) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial Regulation? If not, provide information about the timing of the ex-ante evaluation.</p>
<p>No.</p>

<b>E. Evidence base, planning of further work and consultation</b>
<p>(1) What information and data are already available? Will existing IA and evaluation work be used?</p> <p>(2) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?</p> <p>(3) What is the timing for the procurement process &amp; the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?</p> <p>(4) Is any particular communication or information activity foreseen? If so, what, and by when?</p>
<p>(1) The Commission services have at their disposal the results of the study on Monitoring and Enforcement Practices in Corporate Governance in the Member States of 2009. Moreover, the Commission services regularly receive information from the European Corporate Governance Codes network which is an informal network of national bodies in charge of setting up and monitoring the application of the corporate governance codes</p> <p>(2) The Commission services will gather further information through contacts with the members of the above mentioned ECGC network.</p> <p>(3) Not applicable.</p> <p>(4) No particular communication foreseen at this stage.</p>
<p>Which stakeholders &amp; experts have been or will be consulted, how, and at what stage?</p>
<p>The Green Paper on the EU corporate governance framework drew strong interest from a wide range of stakeholders and experts (more than 400 responses). No further public consultation is planned.</p> <p>Moreover, the Commission is in regular contact with the national experts from the European Corporate Governance Codes network. A special meeting with the network members has been organised in January 2013.</p>

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<sup>1</sup> Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States, available at [http://ec.europa.eu/internal\\_market/company/ecgforum/studies\\_en.htm](http://ec.europa.eu/internal_market/company/ecgforum/studies_en.htm)