European Commission Action Plan on Corporate Governance of Listed Companies

December 14, 2012

On December 12, 2012, the Commission announced an action plan seeking to modernize company law and corporate governance[1] (the "Action Plan"), organized around the following three themes:

- **Transparency**: improving the information companies provide to the marketplace regarding corporate governance, and in return, allowing companies to know the identity of their shareholders and institutional investors' voting policies;
- **Involving shareholders in governance**: monitoring compensation policy and related party transactions;
- **Company growth and competitiveness**: simplifying the cross-border activities of European companies, particularly small and medium-sized companies.

These three topics will lead to a modification of the rules applicable to the European Company, the transfer of corporate seat within the European Union, or even the "acting in concert" concept.[2]

This memorandum focuses on three specific aspects of the Action Plan which are central to corporate governance issues, namely:

- Oversight of related party transactions;
- Improved implementation of the "comply or explain" principle; and
- Oversight of compensation policy and the "say-on-pay" concept.

If the Action Plan leads to the development of EU legislation, it could profoundly modify the definition of, and regime applicable to, related party transactions in France; it would also lend support to the AMF's recommendations seeking to improve implementation of the "comply or explain" principle. Finally, it could inspire the government in the development of the draft law on governance of private companies.

1. Oversight of related party transactions

In its Action Plan, the Commission indicates that, in 2013, it will propose an initiative seeking to strengthen shareholder oversight of related party transactions, for example by proposing to amend Directive 2007/36/CE of the European Parliament and the Council of July 11, 2007 regarding the exercise of certain listed company shareholders' rights (the "**Shareholders' Rights Directive**") (see section 3.2 of the Action Plan).

[1] See the attached communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: "Action Plan: European company law and corporate governance -a modern legal framework for more engaged shareholders and sustainable companies".

[2] On the topic of "acting in concert," the Commission advocates greater legal certainty, which could involve a reformulation of its definition.

Although the text does not yet specify the content of the amendments the Commission wishes to propose, it does make reference to the European Corporate Governance Forum's recommendations[3], according to which (i) transactions representing more than 1% of company assets should be evaluated by an "independent advisor" to confirm that the transaction is "fair and reasonable" and (ii) the largest transactions (representing more than 5% of company assets) should be approved by shareholders.

The Action Plan might thus lead to the adoption of harmonized rules on related party transactions, relating both to their definition (related party transactions would be defined by a quantitative criterion measured by reference to a percentage of company assets) and to the applicable regime (evaluation by an "independent advisor" to confirm that the transaction is "fair and reasonable" and shareholders' vote on the transaction).

Definition of related party transactions – Quantitative criterion measured by reference to a percentage of company assets

In France, the definition of related party transactions provided by articles L. 225-38 et seq. of the French Commercial Code, depends on the parties to the transaction in question and the significance of the transaction to the company. In brief, the transaction is a related party if it satisfies two conditions:

- It is made between the company and either one of its directors or a shareholder holding more than 10% of voting rights, or between two companies with a common director; and
- It does not bear on transactions conducted in the ordinary course of business (*operations courantes*) and is not concluded on an arm's-length basis (*conditions normales*, i.e., conditions normally used by the company in its third-party relationships).

As opposed to this qualitative approach, the Action Plan, by way of reference to the European Corporate Governance Forum's recommendations, follows a quantitative criterion measured by reference to a percentage of company assets (*"transactions representing more than [5/1]% of assets"*).

If pursued on this point, the Action Plan would lead to a fundamental modification of the criteria for identifying related party transactions in France. In any case, the Commission's deliberations will inform those of the AMF on these topics. It is noted that, in July 2012,[4] the AMF proposed that board of directors' decisions authorizing related party transactions be justified; i.e., that they explain the interest of the transaction for the company and the financial conditions attached to the transaction. The AMF also suggested that the French national association of auditors' (*Compagnie nationale des commissaires aux comptes*) study on intragroup transactions, which in particular provides explanations as to what is captured by a "transaction conducted in the ordinary course of business and concluded on an arm's-length basis" (*convention courante conclue à des conditions normales*), be updated to cover both intragroup transactions and transactions outside the group. Moreover, the AMF would like companies to establish an internal charter defining the criteria used, based on the aforementioned study, to classify a related party transaction. The AMF finally proposed that the French Commercial Code be amended to exclude transactions concluded between a listed company and its directly or indirectly wholly-owned subsidiaries (as of the time of the transaction) from the regime applicable to related party transactions.

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[3] See the *Statement of the European Corporate Governance Forum on Related Party Transactions for Listed Entities* dated March 10, 2011.

[4] See proposals number 19-21 and 24 of AMF recommendation number 2012-05 of July 2, 2012 on general shareholder meetings of listed companies.

Related Party Regime – Independent Expertise and Shareholders' Vote

The Action Plan appears oriented toward a regime of dual oversight of related party transactions:

- Transactions representing more than 1% of company assets should be subject to evaluation by an "independent advisor" to confirm that the transaction is "fair and reasonable";
- The largest transactions (representing more than 5% of company assets, or having a significant impact on company profit or revenue) should be approved by shareholders, although it is not specified whether this vote should occur before conclusion of the transaction in question or whether, as is the case in France, it may occur *a posteriori*. The penalties for noncompliance with this regime are not specified. In any case, if this approach is followed, it would lead to a modification of the distribution of powers between the shareholders' meeting and company executives.

Independent assessment confirming that the transaction is "fair and reasonable"

In France, the AMF[5] recently recommended:

To "*prompt the board of directors to appoint an independent expert when the conclusion of a related party transaction could have a very significant effect on the financial position or results of the company and/or of the group*"; and

To "*make public [the independent assessment] subject, as necessary, to elements which could harm business secrets*".

The Action Plan could thus lead to the establishment of a legal requirement to involve an independent expert, which currently is only an AMF proposal ("soft law") to "prompt" the Board to appoint an expert.

Shareholder vote

In France, while Board approval must occur before conclusion of the transaction, shareholder consultation occurs *a posteriori* (articles L. 225-38 and L. 225-40 of the French Commercial Code). If the shareholders' meeting rejects the transaction, it remains in effect with respect to third parties but any harmful consequences for the company may have to be borne by the interested director or shareholder (article L. 225-41 of the French Commercial Code).

Neither the Action Plan nor the recommendations of the European Corporate Governance Forum specify whether the shareholder vote they recommend should occur before the conclusion of any related party transaction. With respect to the demands of timely company management, such an option seems difficult to apply. If it were to lead to the introduction of a mandatory prior shareholder vote, the Action Plan would have very significant consequences for French companies.

2. Improving the implementation of the "comply or explain" principle

Although the "comply or explain" principle offers the advantage of flexibility, the Commission notes that the explanations provided by companies are insufficient if they simply mention, without explaining, a departure from the corporate governance code to which they refer, or if the explanation provided is seen as too general and limited.

[5] See proposition number 25 of AMF recommendation number 2012-05 of July 2, 2012 on general shareholder meetings of listed companies.

In its Action Plan, the Commission thus announces an initiative planned for 2013, likely via a recommendation, to improve the quality of information on corporate governance and, in particular, of explanations which must be given by companies diverging from the code of corporate governance to which they adhere (see section 2.2 of the Action Plan).

In France, the AMF has already made recommendations along these lines, according to which:

- Companies must "provide explanations which are sufficiently circumstance-specific and adapted to the specific situation of the company";[6]
- "in case of nonapplication of all or part of the code, the explanations provided must be detailed and placed in context, and not use general or 'all-purpose' formulations or circular statements…[The company] must thus set out factually, for each exemption, the company situation which specifically justifies it…;
- on a more substantial level, and in order for the 'explain' principle to have its full impact, the AMF considers that companies which do not apply a code recommendation should nonetheless explain how they achieve the general goal set by such recommendation. The 'comply or explain' principle thus implies for the company to conform to the underlying principles of governance in the code's recommendations, by other means if necessary…;
- in the absence of effective application of such alternative solutions, the company should explain the initiatives taken and their implementation schedule in view to full compliance with the governance code provision in question or the implementation of such alternative measures".[7]

The AMF's recommendations constitute a significant addition in relation to legal requirements (article L.225-37 of the French Commercial Code) and to the recommendations contained in corporate governance codes. From this point of view, the Action Plan will undoubtedly lend support to the AMF's recommendations and thus enhance the practical consequences of this initiative.

3. Oversight of compensation policy – Say-on-Pay

In its Action Plan, the Commission announces an initiative planned for 2013 which could take the form of an amendment of the Shareholders' Rights Directive to permit shareholders to decide on compensation policy (see section 3.1 of the Action Plan).

The Action Plan does not currently indicate if the shareholder vote would be purely advisory or instead binding, nor whether it would address compensation of top management in addition to that of directors.

Adopted in the United Kingdom in 2002, Say-on-Pay has since gained traction both in Europe (for example, in the Netherlands and in Germany) and in the United States.[8] However, Say-on-Pay has been implemented quite differently in each country:

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[6] See page 3 of AMF recommendation number 2012-02 on corporate governance and executive compensation for companies adhering to the AFEP/MEDEF Code (Consolidated presentation of recommendations contained in the AMF annual reports).

[7] See pages 23–25 of AMF recommendation number 2012-14 of October 11, 2012 (AMF 2012 annual report on corporate governance and executive compensation).

[8] *Say-on-Pay* is mandatory for all US listed companies following the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted on July 21, 2010. Some companies had already adopted it on a voluntary basis (Hewlett Packard, American Express, etc.) and banks receiving the American government's emergency assistance (the Troubled Asset Relief Program) were subject to it as of fiscal year 2009.

- The vote is not required in Germany: the shareholders' meeting will only decide on the compensation of members of the management board (*Vorstand*) if such a resolution is placed on the agenda by the management board or by a minimum number of shareholders; in contrast, the vote must be placed on the agenda in the United States, the United Kingdom and the Netherlands;
- The vote is advisory in the United Kingdom, the United States and Germany, but binding in the Netherlands, and the British parliament is currently studying a draft law which would make shareholder votes binding in the United Kingdom;[9]
- In the United Kingdom, the vote bears only on compensation of directors, whereas it relates more generally to the compensation of executives in the United States, the Netherlands, and Germany;
- The frequency of the vote differs: it is annual in the United Kingdom and in Germany; in contrast, in the Netherlands the vote is only required in case of modification of voting policy.

Experience on the other side of the Atlantic reveals wide shareholder support for the structure of executive compensation[10] but also demonstrates the effectiveness of even a purely advisory Say-on-Pay. For example, Abercrombie & Fitch recently modified the compensation of its CEO after the shareholder consultation received only 25% of votes in favor.[11]

In France:

- Shareholders already decide on the total amount of attendance fees awarded to directors (article L. 225-45 of the French Commercial Code);
- Moreover, the Minister of Economy, Finance and Foreign Trade, following the June 13, 2012 Council of Ministers (*Conseil des ministres*) meeting, announced measures "*to strengthen governance and oversight regarding compensation. After a consultation phase, in autumn the Government will introduce a draft law allowing…the overhaul of private company governance in order to strengthen the oversight conducted of compensation*".

Since then, the AMF,[12] the French Association of Private Companies (*Association française des entreprises privées*) and the Movement of French Businesses[13] (*Mouvement des entreprises de France*), as well as the French Institute of Directors[14] (*Institut français des administrateurs*) declared

[9] The vote would concern a company's pay policy, including exit payments and would occur every year, unless the voting policy remains unchanged, in which case the vote would occur every three years. See the June 20, 2012 remarks of Vince Cable, Secretary of State for Business, Innovation and Skills on directors' pay, and the Davis Polk memorandum "U.K. Proposes Binding '*Say-on-Pay' and a Limitation on Executive Severance Arrangements"* available at **http://www.davispolk.com/briefing/corporategovernance/blog.aspx?entry=174.**

[10] On May 18, 2012, when the 2012 shareholder meeting season was already well underway, fewer than 10% of listed companies widely held by the public (large accelerated filers with a float of more than $75 million) reported votes of less than 70%. For more details, see the comparison between the 2012 and 2011 seasons available at **http://www.davispolk.com/briefing/corporategovernance/blog.aspx?entry=177**.

[11] See the *Say-on-Pay* section of the "*Summer Watch-List of Corporate Governance Developments*" available at **http://www.davispolk.com/briefing/corporategovernance/blog.aspx?entry=187.**

[12] See pages 28–32 of AMF recommendation number 2012-14 of October 11, 2012 (AMF 2012 annual report on corporate governance and executive compensation).

[13] See pages 24–26 of the joint response of the French Association of Private Companies and the Movement of French Businesses, dated September 19, to the consultation of the Treasury (*Direction générale du trésor*) regarding compensation of corporate executives.

[14] See page 6 of the response of the French Institute of Directors, dated September 14, to the consultation of the Treasury (*Direction générale du trésor*) regarding compensation of corporate executives.

themselves in favor of an advisory vote on executive compensation, whereas Proxinvest[15] called for a binding vote. In contrast, the National Association of Joint Stock Companies[16] (*Association nationale des sociétés par actions*) recommends a non-voting deliberation on the part of the report of the board and president regarding compensation of executive officers.

Although this draft law, which had been announced for autumn 2012 has not yet been published, the ongoing debates and reflections on the European plan will weigh heavily in the context of the development of the government's draft law on governance of private companies, which could take effect during 2013.

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15. See pages 15 and 16 of Proxinvest's response to the consultation of the Treasury (*Direction générale du trésor*) regarding compensation of corporate executives, dated September 7, 2002.

16. See pages 10 and 11 of the remarks presented by the National Association of Joint Stock Companies (*Association nationale des sociétés par actions*) on September 17, 2012 regarding the consultation of the Treasury (*Direction générale du trésor*) regarding compensation of corporate executives (*Avis* number 12-051).

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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies

(Text with EEA relevance)

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1. INTRODUCTION

The Commission's 'Europe 2020' Communication[1] calls for improvement of the business environment in Europe. A modern and efficient company law and corporate governance framework for European undertakings, investors and employees must be adapted to the needs of today's society and to the changing economic environment. The latest comprehensive review in this policy area stemmed from the 2003 Action Plan on Modernising Company Law and Enhancing Corporate Governance in the European Union[2] and the subsequent consultation on future priorities for this Action Plan carried out in 2005 and 2006[3]. A large number of initiatives announced in the 2003 Action Plan have been adopted. In particular rules on corporate governance statements have been introduced in the Accounting Directive[4], a Directive on the exercise of shareholders' rights[5] and the Tenth Company Law Directive on Cross-border mergers[6] have been adopted. Moreover, the Commission adopted two Recommendations regarding the role of independent non-executive directors and remuneration[7]. Besides, the Second Company Law Directive on formation of public limited liability companies and the maintenance and alteration of their capital[8] and the Third and Sixth Company Law Directive on mergers and divisions have been simplified[9]. Nevertheless, new developments have taken place since that require in the Commission's view further action.

Corporate governance defines relationships between a company's management, its board, its shareholders and its other stakeholders[10]. It determines the way companies

[1] Communication from the Commission *Europe 2020. A strategy for smart, sustainable and inclusive growth*, COM(2010) 2020 final, p. 16-17.

[2] Communication from the Commission to the Council and the European Parliament *Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward*, COM(2003) 284 final.

[3] Document available at: http://ec.europa.eu/internal_market/company/docs/consultation/consultation_en.pdf.

[4] Directive 78/660/EEC

[5] Directive 2007/36/EC

[6] Directive 2005/56/EC

[7] Commission Recommendations 2005/162/EC and 2004/913/EC

[8] See Directive 2006/68/EC amending Directive 77/91/EEC

[9] See Directives2007/63/EC and 2009/109/EC amending Directives 78/855/EEC and 82/891/EEC

[10] See OECD Principles of Corporate Governance, 2004, p. 11, accessible at http://www.oecd.org/dataoecd/32/18/31557724.pdf. The EU corporate governance framework includes legislation in areas such as corporate governance statements, transparency of listed companies,

are managed and controlled. An effective corporate governance framework is of crucial importance because well-run companies are likely to be more competitive and more sustainable in the long term. Good corporate governance is first and foremost the responsibility of the company concerned, and rules at European and national level are in place to ensure that certain standards are respected. The EU corporate governance framework is a combination of legislation and soft law, namely national corporate governance codes applied on a 'comply or explain' basis[11] which gives companies and their shareholders an important degree of flexibility. Shareholders have a crucial role to play in promoting better governance of companies. By doing this they act in both the interest of the company and their own interest.

However, the past few years have highlighted shortcomings in this area. The financial crisis has revealed that significant weaknesses in corporate governance of financial institutions played a role in the crisis. In order to respond rapidly to the problem of excessive risk-taking in credit institutions and ultimately the accumulation of excessive risk in the financial system, the Commission launched in 2010 a Green Paper on corporate governance in financial institutions[12] and, in 2011, it proposed stricter rules on corporate governance in financial institutions in the framework of the CRD IV package[13]. Although corporate governance in listed companies outside the financial sector did not give rise to the same concern, certain weaknesses have also been observed In particular, there is a perceived lack of shareholder interest in holding management accountable for their decisions and actions, compounded by the fact that many shareholders appear to hold their shares for only a short period of time. There is also evidence of shortcomings in the application of the corporate governance codes when reporting on a 'comply or explain' basis. Against this backdrop the Commission adopted its Green Paper on the EU corporate governance framework (hereinafter 'the 2011 Green Paper')[14], which launched a discussion on how to improve the effectiveness of the current rules. While respondents were divided as to the need for further regulation at EU level, there was strong support for EU measures in some specific fields[15]. The European Parliament also expressed its view on the questions raised by the 2011 Green Paper in a Resolution adopted on 29 March 2012[16] highlighting the importance of corporate governance to society at large.

shareholders' rights and takeover bids as well as 'soft law', namely recommendations on the role and on the remuneration of companies' directors.

[11] See infra, point 2.2

[12] COM(2010) 284 final.

[13] COM(2011) 453 final and COM(2011) 452final.

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

[15] See feedback statement of 15 November 2011 and responses received at http://ec.europa.eu/internal_market/company/modern/corporate-governance-framework_en.htm, hereinafter 'the 2011 Green Paper feedback statement'.

[16] European Parliament Resolution of 29 March 2012 on a corporate governance framework for European companies, see point 41, P7_TA(2012)0118: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0118+0+DOC+XML+V0//EN&language=EN.

European company law is a cornerstone of the internal market[17]. It facilitates freedom of establishment of companies while enhancing transparency, legal certainty and control of their operations. In recent times, however, it has become more difficult to reach agreement at EU level on the adoption of company law initiatives. These difficulties are, for example, illustrated by the lack of progress on some simplification initiatives[18] and on the proposed statute of the European Private Company (SPE). Nevertheless, at the same time, the cross-border dimension of business has grown tremendously from both a company and a consumer perspective. The Commission services have therefore launched a process of reflection on the future of European company law, beginning with the publication of a report prepared by an ad hoc reflection group[19] and a public conference held in Brussels on 16 and 17 May 2011[20]. In order to gather views across a broad spectrum of stakeholders, an on-line consultation was launched on 20 February 2012 (hereinafter "the 2012 public consultation")[21]. The European Parliament also expressed its view on the way forward for European company law in a Resolution adopted on 14 June 2012[22]. A majority of respondents to the 2012 public consultation were in favour of new measures to modernise the existing company law framework[23].

This Action Plan outlines the initiatives that the Commission intends to take in order to modernise the company law and corporate governance framework. It identifies three main lines of action:

- Enhancing transparency – companies need to provide better information about their corporate governance to their investors and society at large. At the same time companies should be allowed to know who their shareholders are and institutional investors should be more transparent about their voting policies so that a more fruitful dialogue on corporate governance matters can take place.

- Engaging shareholders – shareholders should be encouraged to engage more in corporate governance. They should be offered more possibilities to oversee remuneration policy and related party transactions, and shareholder cooperation to this end should be made easier. In addition, a limited number of obligations will need to be imposed on institutional investors, asset managers and proxy advisors to bring about effective engagement.

17 The scope of EU company law covers the protection of interests of shareholders and others, the constitution and maintenance of public limited-liability companies' capital, branches disclosure, mergers and divisions, minimum rules for single-member private limited-liability companies and shareholders' rights as well as legal forms such as the European Company (SE), the European Economic Interest Grouping (EEIG) and the European Cooperative Society (SCE).

18 See, for example, COM(2008) 194 of 17 April 2008.

19 Available at http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf.

20 See http://ec.europa.eu/internal_market/company/modern/index_en.htm#conference.

21 The text of the consultation is available at: http://ec.europa.eu/internal_market/consultations/2012/company_law_en.htm.

22 European Parliament Resolution of 14 June 2012 on the future of European company law, P7_TA(2012)0259: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0259+0+DOC+XML+V0//EN&language=EN.

23 See feedback statement of 17 July 2012 and responses received at: http://ec.europa.eu/internal_market/company/modern/index_en.htm#consultation2012.

- Supporting companies' growth and their competitiveness – there is a need to simplify cross-border operations of European businesses, particularly in the case of small and medium-sized companies.

Besides supporting these three key objectives, the Commission will launch an overarching codification exercise in order to make the regulatory framework more user-friendly.

This Action Plan is the fruit of the 2012 public consultation, of various discussions with many stakeholders and of the Commission's own analysis. It sets out the initiatives which the Commission intends to take in the areas of company law and corporate governance. The different measures in the Action Plan will not all have the same scope. EU corporate governance rules only apply to companies listed on a stock exchange. On the other hand EU company law applies in principle to all EU public limited liability companies. The Commission will ensure that the initiatives will not create unnecessary burdens for companies, and will in particular take into account the specific situation of SMEs.

All the initiatives will be subject to ex-ante impact assessments. The Action Plan cannot pre-empt the results of these impact assessments. The Commission may therefore have to modify its planning, as regards either its content or timing, if need be. New issues may subsequently arise and need to be pursued in addition to the initiatives set out in this Action Plan. New elements might arise from the responses to the planned consultation on the long-term financing of the European economy. The forthcoming Green Paper on this issue will launch a broad debate on how to strengthen the capacity of the financial sector in the EU to provide long-term financing for productive investment needed to drive sustainable growth. It will address issues such as the need to ensure there is access to diverse sources of finance; the importance of avoiding too much focus on short-term horizons only; and the need to enhance capacity and develop new products conducive to long-term financing. The scope of the Green Paper is therefore broader than corporate governance issues; but it may also provide further input on how long-term shareholder engagement can be encouraged and how appropriate corporate governance arrangements might support long-term financing.

2. ENHANCING TRANSPARENCY

2.1. Disclosure of board diversity policy and management of non-financial risks

In Europe, different board structures coexist. Depending on the country, listed companies may put in place either a 'single board' system (also called 'monistic' or 'unitary board' system), a two-tier (or 'dual board') system or some form of mixed system. The Commission acknowledges the coexistence of these board structures, which are often deeply rooted in the country's overall economic governance system, and has no intention of challenging or modifying this arrangement.

Regardless of the board structure, board composition plays a key role in a company's success. Effective oversight of the executive directors or the management board by the non-executive directors or supervisory boards[24] leads to successful governance of

[24] As applicable, depending on the (single, mixed or two-tier) structure of the board.

the company. In this regard, diversity of competences and views among the board's members is very important. It facilitates understanding of the business organisation and affairs and thus enables the board to challenge the management's decisions objectively and constructively. In contrast, insufficient diversity could lead to a so-called group-think process, translating into less debate, fewer ideas and challenges in the boardroom and potentially less effective oversight of the management board or executive directors. The Commission, encouraged by the results of the 2011 Green Paper consultation[25], considers that increased transparency as regards board diversity policy could make companies reflect more on the issue and take better account of the need for greater diversity on their boards. This initiative will also be complementary to the specific proposal on improving the gender balance among non-executive directors of listed companies[26].

The Commission believes also that (supervisory) boards should give broader consideration to the entire range of risks faced by their company. Extending the reporting requirements with regard to non-financial parameters would help in establishing a more comprehensive risk profile of the company, enabling more effective design of strategies to address those risks. This additional focus on non-financial aspects would encourage companies to adopt a sustainable and long-term strategic approach to their business.

In order to encourage companies to enhance board diversity and give greater consideration to non-financial risks, the Commission will make in 2013 a proposal to strengthen disclosure requirements with regard to their board diversity policy and risk management through amendment of the accounting Directive[27].

2.2. Improving corporate governance reporting

The quality of the corporate governance reports produced by listed companies has been subject to criticism. Corporate governance codes in the EU are applied on a 'comply or explain' basis. This approach allows companies to depart from particular recommendations of the applicable code, provided they explain the reasons for doing so. However, the explanations provided by companies are often insufficient. They either simply state that they had departed from a recommendation without any further explanation, or provide only a general or limited explanation[28]. As these explanations are used by investors to make their investment decisions and assess the value of a company, such shortcomings limit the system's usefulness and viability. A large majority of respondents to the 2011 Green Paper were in favour of requiring companies to provide better explanations for departing from codes' recommendations.

Following on from the 2011 Green Paper, some Member States have initiated discussions or issued guidelines on the quality of the explanations provided by companies. For example, in Finland, the Securities Markets Association issued on 20 January 2012 guidelines on explanations that companies should provide. The Belgian Corporate Governance Committee commissioned an independent study on the

[25] See the 2011 Green Paper feedback statement.

[26] See XXXX

[27] Directive 78/660/EEC.

[28] See the 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.

quality of explanation and, on the basis of the findings of this study, issued a number of practical recommendations in 2012. In the UK, the Financial Reporting Council launched in December 2011 a discussion between companies and investors on what constitutes appropriate explanation and, consequently, introduced guidelines on the 'comply or explain approach' in the Corporate Governance Code. The Commission welcomes these initiatives. It also intends to encourage further cooperation between the national bodies in charge of monitoring the application of the corporate governance codes, in particular through exchange of best practices developed in different Member States.

The Commission will take in 2013 an initiative, possibly in the form of a Recommendation, to improve the quality of corporate governance reports, and in particular the quality of explanations to be provided by companies that depart from the corporate governance codes.

2.3. Shareholder identification

The 2011 Green Paper asked whether stakeholders saw a need for a European mechanism to help issuers identify their shareholders in order to facilitate dialogue on corporate governance issues. In addition, the Green Paper enquired whether this information should also be made available to other investors. A clear majority of respondents were in favour of such a mechanism[29]. Particularly strong support came from both businesses and investors.

Opinions on what would be the best way forward were significantly divided though. Some respondents felt that requiring issuers to offer a forum to shareholders on their corporate websites was sufficient. Others, on the contrary, spoke out in favour of a fully-fledged EU shareholder identification mechanism. Quite a lot of respondents suggested lowering the thresholds for notification of major holdings in the Transparency Directive instead. Finally, a substantial group held that Member States should be required to provide mutual recognition for existing national identification mechanisms and, if necessary, should be obliged to introduce a national transparency tool respecting some minimum requirements.

The European Parliament supports the view that companies issuing name shares should be entitled to know the identity of their owners, but that owners of bearer shares should have the right not to see their identity disclosed. This echoes concerns expressed earlier as to the privacy of retail investors.

The Commission considers that additional information on who owns shares in a listed company can improve the corporate governance dialogue between the company and its shareholders. The existing tools are either not detailed enough or lack the necessary cross-border dimension.

The Commission will propose, in 2013, an initiative to improve the visibility of shareholdings in Europe as part of its legislative work programme in the field of securities law.

[29] See the 2011 Green Paper feedback statement.

2.4. Strengthening transparency rules for institutional investors

Research conducted in preparation for the Commission Green Papers of 2010 and 2011 and the responses to them highlighted a need for improvement in the transparency of voting policies adopted by institutional investors, including asset management firms, and the exercise of these policies[30]. Currently, the UK Stewardship Code[31] and the Dutch Eumedion best practices for engaged share-ownership[32] as well as the Code for external governance of the European Fund and Asset Management Association[33] and the International Corporate Governance Network Global Corporate Governance Principles[34] already recommend institutional investors to be transparent about the way they exercise their ownership/stewardship responsibilities, which includes in particular information about voting and engagement.

Disclosure of such information could have a positive impact on investor awareness, enable ultimate investors to optimise investment decisions, facilitate the dialogue between investors and companies, encourage shareholder engagement and could strengthen companies' accountability to civil society. Moreover, this information could be useful for investors before entering into a portfolio management contract or for beneficiaries of institutional investors acting on behalf of or for the benefit of others. In the light of its overall objective to engage shareholders, the Commission believes this to be the right step forward.

The Commission will in 2013 come with an initiative, possibly through modification of the shareholders rights Directive[35], on the disclosure of voting and engagement policies as well as voting records by institutional investors.

3. ENGAGING SHAREHOLDERS

Effective, sustainable shareholder engagement is one of the cornerstones of listed companies' corporate governance model, which depends inter alia on checks and balances between the different organs and different stakeholders. If for instance the majority of shareholders remain passive, do not seek interaction with the company and do not vote, the functioning of the current corporate governance system is less effective. In such circumstances, no corrective action can be expected from the shareholders' side and supervision of management rests entirely on the shoulders of the (supervisory) board.

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30 Current reporting rules for undertakings for collective investment in transferable securities (UCITS) and alternative investment fund managers (AIFM) only require providing investors with information on investment objectives and policy, including in particular risk profile, past and expected performance and different costs, see Directives 2009/65/EC and 2011/61/EU.

31 See http://www.frc.org.uk/getattachment/e2db042e-120b-4e4e-bdc7-d540923533a6/UK-Stewardship-Code-September-2012.aspx, especially principles 1 and 6

32 See http://www.eumedion.nl/en/public/knowledgenetwork/best-practices/best_practices-engaged-share-ownership.pdf, especially best practice 6

33 See http://www.efama.org/Publications/Public/Corporate_Governance/11-4035%20EFAMA%20ECG_final_6%20April%202011%20v2.pdf, especially principles 1, 5 and 6

34 See https://www.icgn.org/images/ICGN/Best%20Practice%20Guidance%20PDFS/short_version_-_icgn_global_corporate_governance_principles-_revised_2009.pdf, especially point 9.5. See also https://www.icgn.org/files/icgn_main/pdfs/best_practice/inst_share_responsibilities/2007_principles_on_institutional_shareholder_responsibilities.pdf, especially p. 12.

35 Directive 2007/36/EC.

3.1. Better shareholder oversight of remuneration policy

Executive remuneration has been the topic of much discussion in recent years[36]. The Commission believes that companies could benefit from remuneration policies which stimulate longer-term value creation and genuinely link pay to performance. Poor remuneration policies and/or incentive structures lead to unjustified transfers of value from companies, their shareholders and other stakeholders to executives. Therefore, and taking into account existing oversight possibilities, in particular as regards in companies with two-tier board structures, shareholders should be enabled to exercise better oversight of remuneration policies applying to directors of listed companies and the implementation of those policies.

Accordingly, and as evidenced by the results of the 2011 Green Paper consultation[37], shareholders need clear, comprehensive and comparable information on remuneration policies and individual remuneration of directors. This can be achieved through basic harmonisation of disclosure requirements. Moreover, shareholders should be able to express their views on the matter, through a mandatory shareholder vote on the company's remuneration policy and the remuneration report, providing an overview of the manner in which the remuneration policy has been implemented. Currently, not all Member States give shareholders the right to vote on remuneration policy and/or the report, and information disclosed by companies in different Member States is not easily comparable[38].

The Commission will propose in 2013 an initiative, possibly through a modification of the shareholders' rights Directive, to improve transparency on remuneration policies and individual remuneration of directors, as well as to grant shareholders the right to vote on remuneration policy and the remuneration report.

3.2. Better shareholder oversight of related party transactions

Related party transactions, i.e. dealings where the company contracts with its directors or controlling shareholders, may cause prejudice to the company and its minority shareholders, as they give the related party the opportunity to appropriate value belonging to the company. Thus, adequate safeguards for the protection of shareholders' interests are of great importance.

Current EU rules require companies to include in their annual accounts a note on transactions entered into with related parties, stating the amount and the nature of the transaction and other necessary information[39]. However, since this requirement tends to be regarded as insufficient, the European Corporate Governance Forum issued a statement on related party transactions recommending the introduction of common

[36] Specific rules regarding remuneration in financial institutions have already been adopted in the framework of the CRDIII package, and have been in force since January 2011. As inappropriate risk management and excessive short-termism in financial institutions can create systemic risk and affect the economy as a whole, it is important to have sound remuneration policies that do not encourage or reward excessive risk-taking.

[37] See the 2011 Green Paper feedback statement.

[38] See Commission Report COM(2010) 285 final, p. 5 and 8. Available at: http://ec.europa.eu/internal_market/company/docs/directors-remun/com-2010-285-2_en.pdf.

[39] See Article 43(1)(7b) of Directive 78/660/EEC and Article 34(7b) of Directive 83/349/EEC.

principles across Europe[40]. The Forum proposed in particular that transactions above a certain threshold should be subject to evaluation by an independent advisor and that the most substantial transactions should be approved by shareholders. The 2011 Green Paper raised the question of providing more protection against related party transactions. A considerable proportion of respondents called for stronger safeguards. Having regard to this response and to the guidelines contained in the statement of the European Corporate Governance Forum, the Commission considers that shareholders' control over related party transactions should be strengthened.

The Commission will propose in 2013 an initiative aimed at improving shareholders' control over related party transactions, possibly through an amendment to the shareholders' rights Directive.

3.3. Regulating proxy advisors

Institutional investors with highly diversified equity portfolios face practical difficulties in properly assessing how they should vote on items on the agenda of general meetings of investee companies. Therefore, they make frequent use of the services of proxy advisors, such as voting advice, proxy voting and corporate governance ratings. As a result, proxy advisors' influence on voting is substantial. Moreover, it has been argued that institutional investors rely more heavily on voting advice for their investments in foreign companies than for investments in their home markets. Thus, the influence of proxy advisors is likely to be greater in markets with a high percentage of international investors. Currently, proxy advisors are however not regulated at EU level.

The influence of proxy advisors raises some concerns. During the preparation of the 2011 Green Paper, investors and investee companies expressed concern about a lack of transparency in the methods used by proxy advisors for the preparation of their advice. More specifically, it is claimed that the analytical methodology used by proxy advisors fails to take into account company-specific characteristics and/or elements of national legislation and best corporate governance practices. Another concern is that proxy advisors are subject to conflicts of interest, such as when they also act as corporate governance consultants to investee companies. Conflicts of interest also arise when a proxy advisor advises investors on shareholder resolutions proposed by one of its clients. Finally, the lack of competition in the sector raises concerns, partly about the quality of the advice and whether it meets investors' needs.

In 2012 ESMA issued a discussion paper on proxy advisors requesting views on possible regulatory options for proxy advisors, ranging from no action and voluntary measures to quasi-binding or binding EU instruments.[41] The Commission may draw on the results of the discussion to ensure a coherent and effective operational framework for proxy advisors.

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[40] Statement of the European Corporate Governance Forum on Related Party Transactions for Listed Entities, of 10 March 2011, available at: http://ec.europa.eu/internal_market/company/docs/ecgforum/ecgf_related_party_transactions_en.pdf.

[41] See: http://www.esma.europa.eu/content/Discussion-Paper-Overview-Proxy-Advisory-Industry-Considerations-Possible-Policy-Options. The synthesis of responses and ESMA's position will be published shortly.

The Commission will consider an initiative in 2013, possibly in the context of the revision of the shareholders' rights Directive, with a view to improving the transparency and conflict of interest frameworks applicable to proxy advisors.

3.4. Clarification of the relationship between investor cooperation on corporate governance issues and the 'acting in concert' concept

A large number of respondents to the 2011 Green Paper called for clarification of the concept of 'acting in concert'. Indeed, the lack of legal certainty provided by the current rules contained in the Takeover Bids Directive and the Transparency Directive and their transposition in national law is perceived as an obstacle to effective shareholder cooperation. Shareholders need to know when they can exchange information and cooperate with one another without running the risk that their actions may trigger unexpected legal consequences.

If such clarification is not provided, shareholders may avoid cooperation, which in turn could undermine the potential for long-term engaged share ownership under which shareholders effectively hold the board accountable for its actions. The Commission recognises the need for guidance to clarify the conceptual boundaries and to provide more legal certainty on this issue in order to make shareholder cooperation easier.

During 2013, the Commission will work closely with the competent national authorities and ESMA with a view to developing guidance to increase legal certainty on the relationship between investor cooperation on corporate governance issues and the rules on acting in concert.

3.5. Employee share ownership

The Commission believes that employees' interest in the sustainability of their company is an element that ought to be considered in the design of any well-functioning governance framework. Employees' involvement in the affairs of a company may take the form of information, consultation and participation in the board. But it can also relate to forms of financial involvement, particularly to employees becoming shareholders.

Employee share ownership schemes already have a successful tradition and track record in many Member States. Research conducted in preparation for the 2011 Green Paper and responses to it indicate that employee share ownership schemes could play an important role in increasing the proportion of long-term oriented shareholders. Since there are many angles to this issue (for instance taxation, social security and labour law) the Commission finds it important to analyse this subject in more detail, in particular as regards its internal market dimension. In the light of this analysis, it will identify which initiatives may be appropriate to encourage the development of trans-national employee share ownership schemes in Europe.

The Commission will identify and investigate potential obstacles to trans-national employee share ownership schemes, and will subsequently take appropriate action to encourage employee share ownership throughout Europe.

4. IMPROVING THE FRAMEWORK FOR CROSS-BORDER OPERATIONS OF EU COMPANIES

European company law is an integral part of the internal market. It facilitates freedom of establishment of companies while enhancing legal certainty for their operations. It can thereby support companies' growth and competitiveness.

4.1. Transfer of seat

Apart from the rules contained in the Statutes for the European Company (SE), for the European Cooperative Society (SCE) and for the European Economic Interest Grouping (EEIG), there are no EU rules enabling companies to transfer their registered office across borders in a way which would preserve the company's legal personality. Currently, only a few Member States allow for a seat transfer without winding up and subsequent re-incorporation. Companies can also use the cross-border mergers Directive or the SE as a tool for changing their home Member State. The responses to the 2012 public consultation revealed considerable interest in EU rules on cross-border transfers of seats[42]. The Commission acknowledges the importance of this issue. However, it considers that any future initiative in this matter needs to be underpinned by robust economic data and a thorough assessment of a practical and genuine need for and use made of European rules on transfer of seat. This is also in the light of the recent case-law of the European Court of Justice[43] as well as of the developments in Member States' legal frameworks. For this purpose, the Commission will conduct public and targeted consultations on the outcome of which it will report.

Throughout 2013, the Commission will conduct public and targeted consultations to update its impact assessment on a possible initiative on cross-border transfer of registered office.. Subsequently, the Commission will consider the appropriateness of a legislative initiative.

4.2. Improving the mechanism for cross-border mergers

Directive 2005/56/EC on cross-border mergers of limited-liability companies was a big step forward for cross-border mobility of companies in the EU. The framework thus created should now be adjusted to meet the changing needs of the Single Market. The Commission will analyse the conclusions of a forthcoming study on the application of the Directive which will be available in the second half of 2013, taking into account both the experience gained and future needs in this field. There seems to be a particular case for enhancing the procedural rules, given that a number of issues have been identified as a potential source of uncertainty and complexity, in particular a lack of harmonisation as regards methods for valuation of assets, the duration of the protection period for creditors' rights, and the consequences for creditors' rights on completion of the merger. The 2012 public consultation shows strong support for

[42] 373 out of a total of 496 replies (337 in favour of a directive, 36 in favour of other measures), see feedback statement of 17 July 2012 and responses received at: http://ec.europa.eu/internal_market/company/modern/index_en.htm#consultation2012.

[43] Case C-378/10, VALE, point 34

[45] 331 out of a total of 496 replies.

improvement of the cross-border mergers framework[45]. The study that is being conducted will assist the Commission in preparing the necessary follow-up steps.

In 2013 the Commission aims to report on the outcome of the study and subsequently it will consider the appropriateness of amendments to the Directive on cross-border mergers.

4.3. Enabling cross-border divisions

Divisions at national level have for some years been harmonised by Directive 82/891/EEC. However, this has not yet been reflected in the EU legislation on cross-border transactions, under which only cross-border mergers have been explicitly enabled. Currently, companies wishing to undertake a cross-border division have to perform several operations, such as creation of a subsidiary and a subsequent transfer of assets or a domestic division followed by a transfer of seat. Moreover, a clear legal framework setting out the conditions under which cross-border divisions can be made directly would help to reduce costs significantly. There is in fact considerable demand for a clear legal framework for cross-border divisions, as demonstrated by the results of the 2012 public consultation[46].

In 2013, following the results of the study on the application of the Directive on cross-border mergers, the Commission will consider an initiative to provide a framework for cross-border divisions, possibly though an amendment of the cross-border mergers Directive, as the latter is well known to stakeholders and it provides a tested framework for cross-border restructurings.

4.4. Smart legal forms for European SMEs

European SMEs (small and medium-sized enterprises) have an essential role to play in strengthening the EU economy, especially in the face of the economic crisis. Significant work has already been done to make life easier for SMEs in a number of areas in which they seem to have problems, including actions following the 2011 review of the Small Business Act[47]. As regards company law in particular, the Commission believes that SMEs need simpler and less burdensome conditions for doing business across the EU and it remains a clear priority for the Commission to take concrete measures in this regard.

In view of the lack of progress in the negotiations of the proposal of the European Private Company (SPE) Statute, the 2012 public consultation demonstrated stakeholders' hesitation about continuing the negotiations on this proposal. At the same time the stakeholders were keen to explore alternative measures[49]. The Commission will continue to explore means to improve the administrative and regulatory framework in which SMEs operate in order to facilitate SMEs' cross-border activities, provide them with simple, flexible and well-known rules across the EU and reduce the costs they are currently facing.

[46] 318 out of a total of 496 replies.
[47] COM(2011) 78, 23.2.2011.
[49] 251 out of a total of 496 replies.

The Commission will continue to work on the follow-up to the SPE proposal with a view to enhancing cross-border opportunities for SMEs.

4.5. Promoting and improving awareness of the European Company (SE) and the European Cooperative (SCE) Statutes

The SE Statute brought a number of advantages for companies with a European dimension and, with 1 426 SEs registered as of October 2012[50], interest in this legal form continues to grow. According to the 2010 report on the application of the Statute[51], companies have opted for this legal form because of its European image and the possibility to transfer the registered office and to restructure more effectively on a cross-border basis. At the same time, stakeholders complain about high set-up costs, complex procedures and legal uncertainty, often stemming from the many references to national law, lack of sufficient awareness and practical experience with the Statute, and some reportedly strict requirements in the Statute that must be fulfilled to create an SE. Similarly, as far as the SCE is concerned, the Commission takes note of the fact that, following extended consultation[52], the complexity of the Regulation is considered to be one factor explaining the weak use of this instrument (only 25 SCEs incorporated until July 2012), the other being the lack of awareness of the existence of this instrument and of understanding of its benefits for SMEs.

The respondents to the 2012 consultation were supportive of revising EU legal forms in general[53]. However, as the expected benefits of a revision, in terms of simplification and improvement of both Statutes, would not outweigh the potential challenges involved in reopening the discussions, the Commission does not plan to revise them in the short term. Instead, the Commission will focus on improving the awareness of companies and their legal advisers about the SE and the SCE Statutes (including the aspects related to employee involvement) in order to encourage them to opt for these legal forms more often.

The Commission will, in 2013, launch an information campaign to increase awareness of the European Company (SE) Statute through a comprehensive website bringing together practical advice and relevant documents on the Statute and will examine how a similar action can be undertaken for the promotion of the European Cooperative (SCE) Statute.

4.6. Groups of companies

The 2012 public consultation has shown that the public is in favour of well-targeted EU initiatives on groups of companies[54]. In particular two items have been previously identified on the basis of the reflection group report[55] and other material submitted to the Commission before or during the consultation. Simplified communication of a group's structure to investors and an EU-wide move towards

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50 See http://ecdb.worker-participation.eu/
51 Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0676:FIN:EN:PDF.
52 See http://ec.europa.eu/enterprise/policies/sme/public-consultation/past-consultations/index_en.htm
53 61 % (307 out of 496) in favour.
54 See feedback statement of 17 July 2012 and responses received at: http://ec.europa.eu/internal_market/company/modern/index_en.htm#consultation2012.
55 For more information, please see Reflection Group report, pages 59-75, http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf.

recognition of the concept of 'group interest' would be welcomed by stakeholders. On the other hand the idea of a comprehensive legal EU framework covering groups of companies was met with caution.

The Commission will, in 2014, come with an initiative to improve both the information available on groups and recognition of the concept of 'group interest'.

5. CODIFICATION OF EU COMPANY LAW

European company law provisions are spread across many different legal acts. This makes it difficult for users to have a clear overview of applicable law in this policy area. The large number of Directives dealing with company law also carries the risk of unintended gaps or overlaps. The 2012 public consultation shows that there is strong support for the idea of merging existing company law Directives[56]. More than 75 % of respondents[57] asked for either the creation of a single EU company law instrument absorbing the existing Directives or several mergers of groups of Directives with a similar scope. The European Parliament also supports this approach[58].

The Commission considers it important to make EU company law more reader-friendly and to reduce the risk of future inconsistencies. It will therefore prepare the codification of major company law Directives and their merger into a single instrument. This exercise will encompass Directives covering mergers and divisions, the formation of public limited companies and the alteration and maintenance of their capital, single-member private limited companies, foreign branches and certain rules on disclosure, validity and nullity[59]. It will also include the changes introduced by the recent Directive on the interconnection of business registers[60]. Progress on the work will to some extent depend on the conclusion of parallel initiatives such as the crisis management framework, which involves minor amendments to existing company law Directives.

The Commission plans to adopt, in 2013, a proposal codifying and merging major company law Directives.

6. CONCLUSION

The Commission has identified in this Action Plan a number of concrete lines of action in the area of company law and corporate governance to ensure further improvements in these areas. These include in particular initiatives increasing the level of transparency between companies and their shareholders, initiatives aimed at encouraging and facilitating long-term shareholder engagement and initiatives in the

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56 See feedback statement of 17 July 2012 and responses received at: http://ec.europa.eu/internal_market/company/modern/index_en.htm#consultation2012.

57 376 out of a total of 496 replies.

58 European Parliament Resolution of 14 June 2012 on the future of European company law, see point 10, P7_TA(2012)0259: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0259+0+DOC+XML+V0//EN&language=EN.

59 Directives 1977/91/EEC, 1982/891/EEC, 1989/666/EEC, 2005/56/EC, 2009/101/EC, 2009/102/EC and 2011/35/EU.

60 Directive 2012/17/EU.

field of company law supporting European businesses and their growth and competitiveness. The initiatives in the area of corporate governance do not aim at altering the current approach, but ensure, by encouraging proper interaction between companies, their shareholders and other stakeholders, that this approach becomes more efficient. As regards company law, the initiatives proposed focus in particular on providing companies more legal certainty, in particular as regards cross-border operations. The Commission will continue to explore with stakeholders possible further actions to ensure that the EU framework for company law and corporate governance contributes to the objective of smart, sustainable and inclusive growth.

A synopsis of these initiatives is provided in the annex. Stakeholders who are interested in following developments in more detail are invited to consult the Commission's website regularly:

http://ec.europa.eu/internal_market/company/index_en.htm

Annex: Synopsis of the main initiatives of this Action Plan

Initiative	Instrument and expected timing
Disclosure of board diversity policy and of risk management arrangements	Amendment of the accounting Directive, 2013
Improving the visibility of shareholdings in listed companies in Europe	Securities legislation, 2013
Improving the quality of corporate governance reports and in particular the quality of explanations which should be provided by listed companies that depart from the corporate governance code provisions	Possibly non-legislative initiative, 2013
Disclosure of voting and engagement policies as well as voting records by institutional investors	Possibly Shareholders' rights Directive, 2013
Improving transparency on remuneration policies and individual remuneration of directors, and granting shareholders the right to vote on the remuneration policy	
Improving shareholder control over related party transactions	
Improving the transparency and the conflict of interest frameworks applicable to proxy advisors	
Working closely with competent national authorities and ESMA with a view to developing guidance to increase legal certainty as regards the relationship between investor cooperation on corporate governance issues and the rules on acting in concert	Guidance, 2013
Increasing awareness of the European Company (SE) Statute (including employees' involvement) and possibly of the European Cooperative (SCE) Statute.	Information campaign, 2013
The Commission will continue to work on the follow-up to the SPE proposal with a view to enhancing cross-border opportunities for SMEs	Further exploration
Identification of obstacles to employee share ownership in Member States	Ongoing analysis
Rules on cross-border transfer of registered office	Further investigation, 2013 and possibly an initiative
Revision of the rules on cross-border mergers	Study, 2013 and possibly

Rules on cross-border divisions	amending the cross-border mergers Directive
Codification of major company law Directives	Proposal for a codified company law Directive, 2013
Improving the information available on groups and recognition of the concept of 'group interest'	Initiative to be determined, 2014