Green Paper "The EU corporate governance framework"
Position of DSW (Deutsche Schutzvereinigung für Wertpapierbesitz/Germany)

According to official documents of the EC (COM (2003) 284, recommendations 2004/913/EC and 2005/162/EC) the main objective of the corporate governance framework is to strengthen shareholders' rights and to protect employees, creditors and other parties with which companies deal.
Good principles of Corporate Governance and their proper implantation for all listed companies are of vital importance for their long-term perspective, their growth and stability.
Therefore DSW strongly welcomes the initiative of the EU-Commission to review and improve the existing Corporate Governance rules- where necessary.
Nevertheless from a German point of view we would underline that a lot of these proposals are based on the one tier board system and is therefore not easily transferable and applicable to the very specific German two tier board system with its strong checks and balances.

Individual (retail) shareholders are beneficial and most often long-term owners of shares and therefore have a natural incentive to act for a better governance of listed financial institutions. Sadly the role and influence of individual shareholders have been shrinking over time to the benefit of financial institutions and to the detriment of the end –investors and non –financial issuers. The dominance of share registers by institutional holders who are not beneficial owners is at the heart of governance weaknesses in the EU corporate sector. We therefore suggest that in championing the cause of good governance, the EU should take a lead in pressing for a mechanism whereby beneficial owners can exercise their rights. Voting (especially cross–border) is difficult, cumbersome, and often costly for European individual shareholders.

DSW as founding member of EurosharehoIders- the European Association of Retail Investors strongly supports the recently launched project called EuroVote, a service facilitating execution of voting rights cross border. During the 2011 AGM season we have identified several obstacles and deficiencies while trying to exercise voting rights which we will gladly share with the EU-Commission. We believe that removing

these deficiencies and making cross–border voting easy and efficient would importantly contribute to the better governance of listed companies.

Questions:

General

(1) Should EU corporate governance measures take into account the size of listed companies? How? Should a differentiated and proportionate regime for small and medium-sized listed companies be established? If so, are there any appropriate definitions or thresholds? If so, please suggest ways of adapting them for SMEs where appropriate when answering the questions below.

DSW is of the opinion that, from an investor perspective, a strong effective corporate governance regime within the economy will enhance the performance and add value to companies.

Corporate Governance, as defined in the Green Paper, is relevant to all companies whatever their size is. At the same time, corporate governance must be effective and workable in the context of a particular company.
DSW opposes specific rules for SME on an EU-level since from the investors' point of view there should be **comparable transparency for large and SME**. Also it is within the scope of the 'Comply Or Explain' approach that each company can give detailed explanation, if the Corporate governance Code is not being complied. This could open the door to a different practice at SME.

Nevertheless DSW takes into consideration that there is no 'one size fits all'-approach. Each company should have the possibility to select the market segment at different stock exchanges with their different levels of disclosure.
In Germany for example each company can choose to be listed either in the 'Prime standard'- the segment with the highest standards of transparency or in the 'General standard' with lower levels of transparency. It is up to the stock exchanges to offer different market segments. From the investor's side it is then clear that a company listed in the General standard offers a lower degree of disclosure than one listed in the Prime standard. This choice should be left to the stock exchanges and the market participants rather than finding an EU rule for large and SME.

(2) Should any corporate governance measures be taken at EU level for unlisted companies ? Should the EU focus on promoting development and application of voluntary codes for non-listed companies?

The main criteria to apply different rules to companies which are listed or not listed should be the access to the capital market. As soon as a company takes benefit of the capital market by issuing bonds, shares etc. it should be part of a certain transparency regime since in this case there is a need for protection of the investors.

Although DSW is not in favour of applying Corporate Governance rules in general also to private companies we would like to point out that the most recent experiences with the German 'Landesbanken' has shown a remarkable lack of efficient Corporate Governance rules and procedures. DSW therefore advocates the application of Corporate Governance rules with regard to investments/holdings which are being held by the state or where a majority is being owned by the government.

Also unlisted companies which offer investments to third parties should have a minimum level of transparency with regard to their ownership structures and the disclosure of their ultimate beneficiary.

(3) Should the EU seek to ensure that the functions and duties of the chairperson of the board of directors and the chief executive officer are clearly divided?

Yes, definitely. The key role of the board of directors as non-executive members is to supervise the management of the company. Board members are fiduciaries, required to act in the best interest of the company. As the chairperson has a crucial role to play within the board, DSW is very supportive of a clear division between the functions and duties of the chairperson of the board of directors and those of the CEO who will be responsible for executive/operational decisions and day-to-day management. Such a division will allow the chairperson and non-executive directors to oversee aspects about governance, overall policy and strategic direction and represent the needs of the shareholders and other stakeholders. It will improve accountability and provide checks and balances within the board.

This is one of the examples where the two board system as it is most common in German companies as well as in other countries shows definite advantages since it knows a clear distinction between these two responsibilities which should not be mingled. Taking this approach into consideration the EU-Commission should think about introducing the choice between the two tier board system and the one tier board in all EU countries. This way any company in the EU can select whether it wants to establish a two tier board with its strong division of the tasks between CEO and chairperson or a one tier board with a different structure.

1.1 Board Composition

(4) Should recruitment policies be more specific about the profile of directors, including the chairman, to ensure that they have the right skills and that the board is suitably diverse? If so, how could that be best achieved and at what level of governance, i.e. at national, EU or international level?

DSW fully supports the issue of board diversity. Boards in general should reflect the specificities of the company including a good knowledge of the business and the market. Also other aspects such as international diversity, age, and gender should

be adequately represented. Next to these diverse backgrounds the selection of board members should also take the personality into consideration. A strong CEO needs a strong chairman as a sparring partner, if not the system of checks and balances will be outweighed.

Non executive members of boards therefore should show a range of experiences in the field needed by the company, appropriate qualifications, personal qualities, independence and come from diverse backgrounds which fit the needs of the company in question. In an ideal world the nomination committee together with the chairperson will prepare the new board election by a board evaluation in order to find its 'ideal' board composition. Following this concept the nomination committee should then start the search by qualification and personality e.g. by asking a consultant. This new board profile should then be approved by the whole board. Then made transparent to the shareholders via the company's website (see website of Commerzbank for Best Practice example) and as part of the Corporate Governance statement.

Companies should be required to offer all important information about the board members on their website and in a short version in the annual report. Such information should include details on their backgrounds, especially current and recent external board and management positions, age, and date of joining the company and the board.

DSW gives preference to a Code including such rules instead of a binding EU regulation. Non-binding rules via national corporate governance codes show a higher degree of flexibility and can be more easily adapted. Therefore DSW would support minimum standards to define the qualifications or criteria for board members on an EU-level without any strict regulation regime.

(5) Should listed companies be required to disclose whether they have a diversity policy and, if so, describe its objectives and main content and regularly report on progress?

Yes, listed companies should be required to precisely disclose their diversity policy in each Annual Report and in its Corporate Governance report on the website in order to indicate to shareholders, regulators and all other stakeholders that the company takes the requirement to operate to best business practice with respect to diversity policies and recommendations seriously.

DSW strongly supports the newly introduced recommendations of the German Corporate Governance Code which ask companies to precisely explain their diversity strategy with regard to the objective they aim to reach in a certain period of time. Ideally companies publish a precise time frame and quota for gender and international diversity which should be both realistic and ambitious. Deutsche Telekom is a good example for best practice for Europe.

(6) Should listed companies be required to ensure a better gender balance on boards? If so, how?
Yes, definitely. Thereby the EU-Commission should also take into consideration that the different Member States chose different approaches to introduce board diversity. While France and Spain decided to introduce new laws, other countries such as Germany decided for the 'Flexi-quota' as a two step model. Herein companies will have the possibility to voluntarily introduce board diversity into the companies in the next years. If this soft law approach will not be a successful one until 2013, then the introduction of a law seems most probable and adequate.

The EU-Commission should therefore take a close look at the developments in the different Member States with regard to similar standards and a major amelioration of the current situation of board diversity. Such a monitoring process could last until 2013 and if, by then no major changes can be seen then the EU Commission should review the topic again in order to introduce regulatory measures.

1.2 Availability and time commitment

(7) Do you believe there should be a measure at EU level limiting the number of mandates a non-executive director may hold? If so, how should it be formulated?

DSW advocates the ICGN Guidelines[1]which state that "**All directors need to be able to allocate sufficient time to the board to perform their responsibilities effectively, including allowing some leeway for occasions when greater than usual time demands are made. They should assess on an ongoing basis if new activities may limit their ability to carry out their role at the company, and boards should make substantive disclosures regarding the results of these regular assessments.**"
Taking the increased responsibility and new demanding tasks of board members into consideration we do believe that this requires more time commitment and a much higher degree of professionalism than before. We therefore believe that this new situation will automatically lead to a decrease in the number of board positions for professionally acting members.

Also there should be a distinction between the different board positions. A chairperson is undoubtedly the most important non executive director and plays an outstanding role. This board position should therefore be counted twice, which is good practice in Germany.

Also members and even chairpersons of committees demand a larger commitment both in time and work. If EU rules are needed at all then the EU-Commission could think of limiting the number of chair positions.

[1] http://www.icgn.org/best-practice/

Beyond this DSW would like to pinpoint that we should further distinguish between non executive board members who act as employed managers in their company and those non executive members which can dedicate their fulltime to their board mandate. A restriction of multiple directorships for managers which are primarily responsible and are being paid for their management activities, seems very realistic and could be at the utmost three positions on boards.

Additionally, DSW considers it important that listed companies are required to fully disclose board members' other positions in the annual report and on their website.

1.3 Board Evaluation

(8) Should listed companies be encouraged to conduct an external evaluation regularly (e.g. every three years)? If so, how could this be done?

DSW favours encouraging listed companies to conduct a regular board evaluation. Such evaluation can disclose major differences in the approach of board members and deficits in the communication between the CEO and the chairperson and/or other board members.

DSW recommends to German companies the use of regularly reviewed and updated questions as part of this evaluation in order to take current developments such as the financial crisis also into consideration. Since DSW is closely monitoring this topic in recent years we can confirm that a positive development out of those board evaluations can be seen.

Encouraging companies to use external experts, however, from our point of view will lead to increased costs and bureaucracy it should therefore be an exception. We would prefer to leave the decision on the formal procedure (internal/external board evaluation) to the board itself to avoid creating a new and (for companies) expensive field of activity for advisors.

Additionally, DSW supports a regular evaluation of at least every third year or – in case of an upcoming board election.

Finally DSW as representative of investors considers it important, that shareholders will be informed about the (general) outcome of the evaluation in the subsequent annual report of the company as far as confidentiality obligations do not provide otherwise.

1.4 Directors Remuneration

(9) Should disclosure of remuneration policy, the annual remuneration report (a report on how the remuneration policy was implemented in the past year) and individual remuneration of executive and non-executive directors be mandatory?

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

Yes, transparency is crucial to ensure independent roles of non executive directors. In terms of executive directors it is important to disclose the nature of the remuneration schemes and policies so that shareholders can assess whether or not directors' remuneration fits within the level of the company performance compared to peer groups (horizontal approach) and also inside the firm's hierarchy (vertical approach).
In this context it is important that the remuneration is disclosed individually and that the remuneration committee/the board designs appropriate policies and schemes which should be approved by shareholders.

DSW just recently published its new study on directors' pay and transparency of the listed companies in the DAX 30 and M-DAX (see www.dsw-info.de for further details). As a general trend we can say that although transparency of the remuneration schemes has increased we see a strong need for action of the EU-Commission with regard to the comprehensiveness of the reporting.
To give an example: the remuneration report 2010 of the DAX 30 company SAP is more than 16 pages long and is for an ordinary shareholder simply not comprehensive. The same is the case for the reporting of Deutsche Bank and other companies.

From the investors' point of view it is not the length of the report but it is the **understandable structure** which counts. This is especially true if a company has a number of different stock option programmes and restricted incentive awards.
DSW therefore strongly advocates the **introduction of minimum EU standards** for **the reporting on remuneration.** The common use of graphs and definitions could facilitate the transparency for investors and the comprehensiveness and would be a major step forward. This year's study of DSW found Allianz showing an excellent example for a comprehensive and transparent remuneration report which could be standardised in order to increase the comparability of remuneration both inside of Germany and abroad. Such minimum standards should also include the description of pension systems and their values.

The introduction of such disclosure standards on EU level should be comparable to the Summary Compensation Table, required by the SEC for US listed companies[2]. This Summary Compensation Table gives a one-page overview on all remuneration components executive directors have been awarded to during the three precedent fiscal years. This information is provided in a standardised and therefore comparable format.

[2] Form DEF14A of the SEC, see e.g. the Proxy Statement 2010 of Intel Inc. (http://www.intc.com/intelProxy2011/executive_compensation/summary/) which has been filed in accordance with the disclosure requirements of the SEC

With regard to the question of **shareholder approval**, DSW considers it important to find at least a **non binding vote** of the shareholders on the remuneration policy. Here DSW considers it sufficient if a regular approval, preferably in line with the duration of directors' contracts takes place, unless substantial changes have been made to the remuneration policy in the meantime.

Finally DSW is **opposed to legal opting-out clauses** as it is allowed in Germany.[3]

1.5 Risk Management

(11) Do you agree that the board should approve and take responsibility for the company's 'risk appetite' and report it meaningfully to shareholders? Should these disclosure arrangements also include relevant key societal risks?

There is a major difference between the two tier board in Germany and the one tier board in other EU-Member States and its responsibilities with regard to the risk appetite of a company. In Germany it is up to the management board to take care of managing risks. The supervisory board is nowadays responsible for examining the adequacy of the existing risk management systems. Thereby the auditor plays an important role.

Furthermore the supervisory board should be asked for its approval in case of major investments which could also create a major risk for the company. In Germany these are called "zustimmungspflichtige Geschäfte". In this case it is up to the supervisory board to define the threshold (e.g. an investment beyond 1 Mio €) which is decisive for the need of a board approval.

Besides it is important that a report on the company's risk policy is conveyed to shareholders as part of the annual report.

(12) Do you agree that the board should ensure that the company's risk management arrangements are effective and commensurate with the company's risk profile?

Yes, the supervisory board in the two tier system should regularly monitor the effectiveness of the risk management and its measures. It should ask the auditors to write a specific report on the issue.

2 Shareholders

[3] German regulator included a opting-out clause in para. 286 clause 5 HGB whereby companies can opt out from the legal requirement to individually disclose executive directors' remuneration in case the general meeting has approved a respective proposal with a three-quarter majority of voting rights present at the meeting. Experience in Germany shows that companies with a majority shareholder tend to make use of this opting-out clause which we do not consider as being good governance especially because the majority shareholder normally is present on the company's (supervisory)board and here receives this kind of information the other stakeholders do not obtain.

2.1 Lack of appropriate shareholder engagement

DSW does not agree with the analysis about "shareholders' lack of interest in corporate governance". The EC must distinguish between "end" investors, shareholders as owners, and fund managers who usually act for their fund holders.

More important as a reason for a lack of shareholder engagement in our view are the still existing significant hurdles shareholders are facing to vote cross border which are not yet addressed.

DSW therefore sees a need for action of the EU-Commission in order to **review the Shareholder Rights Directive** and eliminate the still existing obstacles to cross border voting (see answer to Q 17).

2.2 Short-termism of capital markets

(13) Please point to any existing EU legal rules which, in your view, may contribute to inappropriate short-termism among investors and suggest how these rules could be changed to prevent such behaviour

The EU- Commission could evaluate whether certain kinds of tax or capital incentives are suitable to increase long term investing. There should be some kind of an economic benefit to the end-investor such as a tax advantage- then long-term investment could be much better promoted.

An example is the capital gains tax on stocks. In some European countries this tax is differentiated between long and short holdings. Lower capital gains tax on long-term investments will certainly support such investments.

2.3 The agency relationship between institutional investors and asset managers

(14) Are there measures to be taken, and if so, which ones, as regards the incentive structures for and performance evaluation of asset managers managing long-term institutional investors' portfolios?

DSW is very supportive of establishing **fee structures for asset managers** which reflect a long term orientation. Long term investments have been proven to be superior to short term investments and show a higher profitability. An asset manager who invests in companies with good fundamental profitability figures although those often undervalued and against the mainstream investment opinion is good in asset allocation and acts in the interest of our economy. Experience has shown that investors with a long term investment horizon often reach better results than short term oriented investors-at least on the long run. It is possible to integrate long term remuneration structures in the contracts with the asset managers using a long term orientation based on the absolute or relative performance of the portfolio.

The absolute performance depends not only on the share of the asset manager but also on the volume of the assets under management. Therefore the question of the flow of the capital to and from the assets under management is of major importance. The best long term fee will not be of help if the client withdraws capital.

For the question of long term investment it is decisive to have a look at the end of the chain of decisions: who decides on the selection of the asset manager? Relevant is the time in which the underperformance of the asset manager can first lead to concerns and could then finally lead to his dismissal.
This time frame in general terms depends on 3 factors:

1. The time horizon of the investor (example: life insurance etc.),
2. The contractual agreement and the rhythm in which the agents or intermediaries involved are being paid,
3. And the cycle of the actual capital flows.

Usually it is the criteria with the shortest term, mostly (3) which is relevant to the asset manager.

To further improve the current remuneration structure for asset managers in order to increase long term orientation DSW fully supports the ICGN model mandate initiative which include model contract terms between asset owners and their fund managers. It would be very helpful, if the EU commission could take up the subject matters included in these ICGN models and introduce them as EU standards for the asset management industry. This should especially include a high level commitment of the asset manager, the adherence to disclosure standards on professional conduct and the integration of this approach into the investment process on a transparent basis.

DSW sees a strong need to specifically integrate stewardship responsibilities into the fund managers' contracts. We see a need for an effective oversight of the voting activities carried out by the fund managers in the name of their clients. This will require clients to direct the voting of the underlying shares in respect of his investment according to the guidelines set by the client.

As founding member of EFI (EuroInvestors – European Federation of Investors) , DSW also supports their position in its position paper on MiFiD II (February 2011) with reference to the European Investors Working Group (EIWG) - report "Restoring Investor confidence in European Capital Markets", February 2010): "Recent developments in financial markets have highlighted how the sale of financial products to retail consumers has been influenced by unbalanced fee structures and compensation mechanisms. In some cases, such compensation mechanisms compromise the ability of investment advisors to uphold the primacy of customers' interests".

Financial intermediaries will be stimulated not only on the basis of cash-incentives, but do act on basis of non-cash incentives, too. A currently released study by EC on

retail investment advice in the EU Member States (MS) showed that the rate of disclosure referring to possible inducements is rather poor. Only 5% of the intermediaries/advisers gave information on **inducements**. So there is also need for action:

Corporate Governance is part of an asset manager's fiduciary duty to enhance the value of clients' assets and ensure the management is running the company in the long-term interest of shareholders. To being able to have an effective oversight of incentive structures, end investors must be provided with utmost transparency to understand whether fee and remuneration structures are appropriate. Therefore, prompt and full disclosure of the asset managers' remuneration scheme is needed.

(15) Should EU law promote more effective monitoring of asset managers by institutional investors with regard to strategies, costs, trading and the extent to which asset managers engage with the investee companies? If so, how?

As said under question 14 the EU-Commission should take up the ICGN model mandate initiative and the U.K. Stewardship Code and develop thereof EU Minimum Standards for all asset managers doing business in the EU. This will, in view of DSW, be a huge step forward into more responsible behaviour of asset managers in view of more long term orientation.

It is extremely important that the institutional investors will show a much higher level of transparency, as it is proposed by the U.K. Stewardship Code. The capital markets should get all information on their investment policy, the average length of their holdings, their internal Corporate Governance rules and structures.

The new Code of Conduct proposed by EFAMA is already a huge step forward, but it would be even better, if the EU-Commission will develop common rules based on the EFAMA Code applicable for all institutional investors and at the same time it should evaluate whether the establishment of a monitoring body of the EC will become necessary..

2.4 Other possible obstacles to engagement by institutional investors

(16) Should EU rules require a certain independence of the asset managers' governing body, for example from its parent company, or are other (legislative) measures needed to enhance disclosure and management of conflicts of interest?

The UK Stewardship Code[4] has shown that acceptance of a local code is high among institutional investors and has helped to improve standards of corporate governance. DSW therefore favours the implementation of an EU Recommendation to invite local standard setters introducing non-binding codes for asset managers by ensuring indispensable minimum standards for all Member States.

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

The 2008 financial crisis has revealed deficiencies in corporate governance and a lack of shareholder engagement. Despite the adoption of the European Shareholders Rights Directive of 2007, there are still many obstacles individual investors have to face while exercising their voting rights, especially cross-border. To further promote shareholders using their voice in European companies, DSW promotes the establishment of a cross-border voting platform like **EuroVote** established by Euroshareholders and saluted by the EU Commission.[5] Such a platform will increase individual investors' active participation in General Meetings, especially cross-border. Furthermore, DSW supports the creation of a **uniform EU Proxy Form** as part of a review of the Shareholder Rights Directive for the representation at General Meetings.

But voting is only step no.1- the next step will be the establishment of a forum for all investors where they could exchange their views on certain companies, and also look for common actions to be taken whenever major shareholder rights or positions are endangered. Via such a meta- platform **("EuroForum**") shareholder cooperation can be improved significantly especially on a cross border basis. The EU-Commission could strongly support these initiatives while reviewing the Shareholder Rights Directive.

2.5 Proxy advisors

(18) Should EU law require proxy advisors to be more transparent, e.g. about their analytical methods, conflicts of interest and their policy for managing them and/or whether they apply a code of conduct? If so, how can this best be achieved?

Yes. Proxy advisors assist clients in meeting their fiduciary obligations as owners. Their vote recommendations have proven to have a significant impact on the voting behaviour of institutional investors and, consequently, on the outcome at general meetings, especially cross-border. Therefore, as already proposed by the UK Stewardship Code, DSW sees a need for the EU Commission to set standards with

[4] http://www.frc.org.uk/images/uploaded/documents/UK%20Stewardship%20Code%20July%2020103.pdf

[5] www.euroshareholders.org/eurovote

regard to transparency of proxy advisors to ensure that they are conducting their business in a transparent, responsible and constructive manner.

As a minimum, proxy advisors should be required to disclose the following information, available to all interested parties on the advisors' websites:
* Voting Guidelines
* Policy on Conflicts of Interest
* Stewardship Policy
* Monitoring Policy
* Disclosure of Voting Activity (post-season regular review)

DSW considers that an **EU-wide Code of Conduct** should be introduced as a first step to ensure the necessary transparency. As experience of the UK Stewardship Code has shown, all major proxy advisors like ISS, Glass Lewis, ECGS etc. have committed themselves to this non-binding transparency standard.

(19) Do you believe that other (legislative) measures are necessary, e.g. restrictions on the ability of proxy advisors to provide consulting services to investee companies?

Providing consulting services to companies by proxy advisory services can create a severe conflict of interest for proxy advisors. DSW therefore considers it important, as stated in our response to Q18, that this issue is addressed by an **EU Code of Conduct.** Such a Code of Conduct should include recommendations with regard to proxy advisors refraining to provide consulting services to companies.

Additionally, proxy advisors should be recommended to disclose any potential conflict of interests in the proxy voting report on the respective company.

2.6 Shareholder identification

(20) Do you see a need for a technical and/or legal European mechanism to help issuers identify their shareholders in order to facilitate dialogue on corporate governance issues? If so, do you believe this would also benefit cooperation between investors? Please provide details (e.g. objective(s) pursued, preferred instrument, frequency, level of detail and cost allocation).

Any mechanism helping issuers to identify their shareholders would only enhance transparency towards the issuer. DSW does not see any benefit for investors as long as issuers are not obliged to disclose the information they receive via any intermediary-guided mechanism also to all other shareholders. Experience in Germany, for example, has shown that more and more issuers change the form of their shares from bearer to registered shares in order to better know their shareholders. Some companies even link the entry in the share register to the

shareholders' right to vote.[6] The information provided to other shareholders, however, has not improved significantly in Germany in recent years.

Another problem which came up in this year's proxy season while voting cross border are the different laws of Member States with regard to the protection of personal data. Example: while a French company can ask its shareholders and/or the bank as the registered shareholder to disclose the identity of the end-investor. This demand cannot be followed by a German bank holding the shares for a German end-investor since German laws for the protection of personal data do not allow the disclosure of his identity. This is another example for an obstacle to cross border voting which the EU Commission should solve.

2.7 Minority shareholder protection

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

Corporate governance is applied differently among European countries. The well-known study of LaPorta et al. (1998)[7], although quite old, describes these differences in a very clear way and provides a solid foundation upon which several studies on corporate governance are based. The case of minority shareholder is also affected by this variety of implementation levels. For example, Kim et al. (2007)[8] examine the relation between minority shareholder protection laws, ownership concentration, and board independence using a sample of large firms from 14 European countries and find that countries with strong minority shareholder laws have more independent directors and that when a country's minority shareholder rights are strong, then minority shareholders have the legal power to affect board composition. Thus, it is first of all a matter of a further harmonisation of different regulations within the EU.

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

Yes.

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[6] See e.g. Munich Re AG, article 6 (3) of the company's Articles of Association 2011 (http://www.munichre.com/app_pages/www/@res/pdf/ir/satzung_en.pdf?072010): "If shareholders are entered under their own name as being the holders of shares which belong to a third party and exceed 0.1% of the share capital as stated in the Articles of Association, they shall be obliged pursuant to Article 3 para. 4 item b of these Articles of Association to make disclosure regarding the submitted shares to the Company no later than three days prior to the General Meeting.

[7] LaPorta R., Lopez-de-Silanes, F., Shleifer, A., and R. Vishny, (1998), "Law and finance", Journal of Political Economy 106, pp. 1113–1155.

[8] Kim K., Kitsabunnarat-Chatjuthamard P. and J. Nofsinger, (2007), "Large shareholders, board independence, and minority shareholders' rights: Evidence from Europe", Journal of Coporarate Finance 13, pp.859-880.

- DSW considers it important to protect minority shareholders against related party transactions. This aim could be reached either by requiring issuers to provide a Dependency Report[9] together with the Annual Report on all transactions undertaken with the major shareholder(s) during the last fiscal year. This report should be audited in the same manner as the Annual Report. It should be ensured, however, that minority shareholders are being informed on the outcome of the auditor's findings and the significant parts of the Dependency Report.
- Furthermore DSW considers it important to increase the number of independent representatives of minority shareholders on boards. The EU-Commission should introduce procedures whereby minority shareholders can nominate candidates for the board as their representatives in order to get more balance into the board. This could be very useful, if a majority shareholder exceeds a certain threshold (e.g. more than 50 % of the capital) or if the free float of a listed company exceeds 30 % of the capital.
- Another important measure would be the EU-wide introduction of legal proceedings in case shareholders are "squeezed-out" of a company. Here, we point to the German example of the so-called "Spruchverfahren": A shareholder holding at least 95 % of the share capital of a company can demand a squeeze-out of minority shareholders by paying them a cash compensation based on the value of the company at the date of the general meeting, the minimum compensation being the share's average stock exchange price during the past three months.[. Such a squeeze-out is subject to shareholder approval at a general meeting. However, as due to the ownership structure, the approval will always be passed with the votes of the majority shareholder, the adequacy of the cash compensation may be challenged in special proceedings (the "Spruchverfahren") within three months after the publication of the entry of the transfer resolution in the commercial register. During the legal proceedings, a Common Representative ensures representation of all shareholders not directly participating in the "Spruchverfahren". The court decision has effect for and against all shareholders, including those who are not directly participating in the proceedings themselves.

2.8 Employee share ownership

(23) Are there measures to be taken, and if so, which ones, to promote at EU level employee share ownership?

3. The 'Comply or Explain' Framework – Monitoring and Implementing Corporate Governance

[9] Comparable to the Dependency Report required by German HGB

(24) Do you agree that companies departing from the recommendations of corporate governance codes should be required to provide detailed explanations for such departures and describe the alternative solutions adopted?

DSW supports the "Comply or Explain" framework in the context that certain minimum standards should be set by legislation leaving room for companies to adapt to certain corporate governance codes. Legislation is in many cases inflexible and the "Comply or Explain" framework offers the opportunity to adapt and change more easily and quickly. However, if there is evidence that not enough detailed or useful information is emerging from this process then the monitoring of the application of these Corporate Governance rules should be further strengthened.

Companies departing from recommendations of corporate governance codes should indeed be required to provide detailed explanations for such departures.

In order to increase the monitoring procedure one could think of a special examination by an auditor who could check the company's Corporate Governance practice in a report. This could be done either by the auditor of the company or by an independent auditor in order to confirm that all Corporate Governance rules indicated as being complied are actually applied in the daily work of the company. This is already good practice in Austria and could serve as a good example for Europe.

(25) Do you agree that monitoring bodies should be authorised to check the informative quality of the explanations in the corporate governance statements and require companies to complete the explanations where necessary? If yes, what exactly should be their role?

In the context of the answer given in the question above, auditors should be authorised to check the informative quality of the explanations in the corporate governance statements and require companies to complete the explanations where necessary. Their role should be to foster the sound implementation of the "Comply or Explain" framework, where the main objective should be to ensure a high level of transparency.

DSW
Deutsche Schutzvereinigung für Wertpapierbesitz e. V.
Düsseldorf/Germany

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