Basic information

2011/2181(INI) INI - Own-initiative procedure	Procedure completed
Corporate governance framework for European companies **Subject** 3.45 Enterprise policy, inter-company cooperation 3.45.01 Company law	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	BODU Sebastian Valentin (PPE)	11/07/2011
	Shadow rapporteur REGNER Evelyn (S&D) THEIN Alexandra (ALDE) LICHTENBERGER Eva (Verts/ALE) KAMALL Syed (ECR) MAŠTÁLKA Jiří (GUE/NGL) SPERONI Francesco Enrico (EFD)	

Committee for opinion	Rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs (Associated committee)	FOX Ashley (ECR)	04/07/2011
EMPL Employment and Social Affairs	CHRISTENSEN Ole (S&D)	12/05/2011
ITRE Industry, Research and Energy	KOLARSKA-BOBIŃSKA Lena (PPE)	01/09/2011
IMCO Internal Market and Consumer Protection	LE GRIP Constance (PPE)	05/09/2011
FEMM Women's Rights and Gender Equality	The committee decided not to give an opinion.	

European Commission	Commission DG	Commissioner
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
05/04/2011	Non-legislative basic document published	COM(2011)0164	Summary
15/09/2011	Committee referral announced in Parliament		
29/09/2011	Referral to associated committees announced in Parliament		
01/03/2012	Vote in committee		
08/03/2012	Committee report tabled for plenary	A7-0051/2012	Summary
28/03/2012	Debate in Parliament		
29/03/2012	Decision by Parliament	T7-0118/2012	Summary
29/03/2012	Results of vote in Parliament		
29/03/2012	End of procedure in Parliament		

Technical information

Procedure reference	2011/2181(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Implementation
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/06789

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE475.797	27/10/2011	
Amendments tabled in committee		PE478.375	05/12/2011	
Committee opinion	EMPL	PE472.246	07/12/2011	
Committee opinion	ECON	PE474.031	20/12/2011	
Committee opinion	ITRE	PE475.776	21/12/2011	
Committee opinion	IMCO	PE475.892	24/01/2012	

Committee report tabled for plenary, single reading		A7-0051/2012	08/03/2012	Summary
Text adopted by Parliament, single reading		T7-0118/2012	29/03/2012	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2011)0164	05/04/2011	Summary
Commission response to text adopted in plenary	SP(2012)426	18/07/2012	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	SE_PARLIAMENT	COM(2011)0164	22/06/2011	
Contribution	DE_BUNDESRAT	COM(2011)0164	11/07/2011	

Corporate governance framework for European companies

2011/2181(INI) - 05/04/2011 - Non-legislative basic document

PURPOSE: to launch a public consultation on ways of improving corporate governance in the EU (Commission Green Paper).

BACKGROUND: corporate governance is traditionally defined as the system by which companies are directed and controlled and as a set of relationships between a company's management, its board, its shareholders and its other stakeholders. The corporate governance framework for listed companies in the European Union is a combination of legislation and 'soft law', including recommendations and corporate governance codes. While corporate governance codes are adopted at national level, Directive 2006/46/EC promotes their application by requiring that listed companies refer in their corporate governance statement to a code and that they report on their application of that code on a 'comply or explain' basis.

Corporate governance and corporate social responsibility are key elements in building people's trust in the single market. They also contribute to the competitiveness of European business, because well run, sustainable companies are best placed to contribute to the ambitious growth targets set by 'Agenda 2020'. In its Communication "Towards a Single Market Act" the Commission stated that it is of paramount importance that European businesses demonstrate the utmost responsibility not only towards their employees and shareholders but also towards society at large.

The G20 Finance Ministers and Central Bank Governors Communiqué of 5 September 2009 emphasised that actions should be taken to ensure sustainable growth and build a stronger international financial system.

Some relevant issues had already emerged in the context of the Green Paper on Corporate Governance in Financial Institutions and remuneration policies adopted in June 2010. For example, shareholder engagement matters not just to financial institutions, but to companies generally.

CONTENT: the purpose of this Green Paper is to assess the effectiveness of the current corporate governance framework for European companies. It addresses three subjects which are at the heart of good corporate governance.

The board of directors: high performing, effective boards are needed to challenge executive management. This means that boards need non-executive members with diverse views, skills and appropriate professional experience. Such members must also be willing to invest sufficient time in the work of the board. The role of chairman of the board is particularly important, as are the board's responsibilities for risk management. The Green Paper discusses means of ensuring the effective functioning of the board of directors and the diversity of its members, through encouraging, for example, gender diversity, international diversity and professional diversity. It also discusses risk management and directors' remuneration. It also asks whether disclosure of remuneration policy, the annual remuneration report and individual remuneration of directors be mandatory.

Shareholders: the corporate governance framework is built on the assumption that shareholders engage with companies and hold the management to account for its performance. However, a lack of appropriate shareholder interest in holding financial institutions' management accountable contributed to poor management accountability and may have facilitated excessive risk taking in financial institutions. There is evidence that the majority of shareholders are passive and are often only focused on short-term profits. It therefore seems useful to consider whether more shareholders can be encouraged to take an interest in sustainable returns and longer-term performance, and how to encourage them to be more active on corporate governance issues. Moreover, in different shareholding structures there are other issues, such as minority protection. The Paper also asks whether EU rules are needed to enhance disclosure and management of conflicts of interest; whether there is a need for a European mechanism to help issuers identify their shareholders and benefit cooperation between investors.

Application of the 'comply or explain' approach: under the 'comply or explain' approach, a company which chooses to depart from a corporate governance code recommendation must give detailed, specific and concrete reasons for the departure. The general introduction of the 'comply or explain' approach in the EU has had its difficulties. A recent study showed that the informative quality of explanations published by companies departing from the corporate governance code's recommendation is - in the majority of the cases - not satisfactory and that in many Member States there is insufficient monitoring of the application of the codes. It is therefore appropriate to consider how to improve this situation. Some adjustments appear necessary to improve the application of the corporate governance codes. The solutions should not alter the fundamentals of the 'comply or explain' approach but contribute to its effective functioning by improving the informative quality of the reports. However, these solutions are without prejudice to the possible need to reinforce certain requirements at EU level by including them in legislation rather than making recommendations.

Two preliminary questions also deserve consideration.

- European rules on corporate governance apply to 'listed' companies (i.e. companies that issue shares admitted to trading on a regulated market). They generally do not distinguish according to company size or type. The question is whether the EU should have a differentiated approach and how best to take account of the potential difficulty of applying some corporate governance practices across the range of types and sizes of companies;
- good corporate governance may also matter to shareholders in unlisted companies. While certain corporate governance issues are already addressed by company law provisions on private companies, many areas are not covered. The question is whether any EU action is needed on corporate governance in unlisted companies.

Interested parties are invited to submit their views on the suggestions set out in this Green Paper to reach the Commission by **22 July 2011 at the latest** . On the basis of the responses received, the Commission will take a decision on the next steps. Any future legislative or non-legislative proposal will be accompanied by an extensive impact assessment taking into account the need to avoid disproportionate administrative burden for companies.

Corporate governance framework for European companies

2011/2181(INI) - 08/03/2012 - Committee report tabled for plenary, single reading

The Committee on Legal Affairs adopted the own-initiative drafted by Sebastian Valentin BODU (EPP, RO) on a corporate governance framework for European companies, in response to the Commission Green Paper on the same issue.

Welcoming the Commission's revision of the EU corporate governance framework initiated by the Green Paper, Members regret, however, that important corporate governance issues such as board decision-making, directors' responsibility, directors' independence, conflicts of interest or stakeholders' involvement have been left out of the Green Paper. They also regret the Green Paper's focus on the unitary system and disregard for the dual system, which is equally widely represented in Europe.

Members underline the importance of the following issues:

- creating a more **transparent, stable, reliable and accountable corporate sector** in the EU, with improved corporate governance;
- the need for **independent auditing and rules** respecting the different corporate cultures in the EU;
- the importance of creating a more transparent, stable, reliable and accountable corporate sector in the EU, with improved corporate governance;
- that it is a prerequisite that a well-governed company should be accountable and transparent to its employees, shareholders and, where appropriate, to other stakeholders;
- that the **2004 OECD definition of corporate governance**, according to which corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders, should be further promoted;
- that a **basic set of EU corporate governance measures** should apply to all listed companies; these measures should be proportional to the size, complexity and type of the company;
- that initiatives on corporate governance should go hand in hand with the initiatives on **corporate social responsibility** proposed by the Commission.

The Commission is called upon to submit every legislative proposal it considers on corporate governance to **impact assessment**, which should focus both on objectives to be attained and on the need to keep companies competitive.

(1) Boards of directors: the report stresses that in unitary systems there should be a **clear demarcation between the duties of the Chair of the Board of Directors and the Chief Executive Officer**; however, it notes that this rule should be proportional to the size and the peculiarities of the company.

The boards must include **independent individuals** with a mix of skills, experiences and backgrounds, that this aspect of their composition should be adapted to the complexity of the activities of the company and that it is the responsibility of the shareholders to ensure the right balance of skills in the board.

The report considers that directors' pay rises should be consistent with the long-term viability of their companies. It supports the inclusion in managers' variable remuneration of long-term sustainability components, such as making a percentage of their variable remuneration dependent on the achievement of corporate social responsibility targets, e.g. health and safety in the workplace and employee job satisfaction.

Members believe that strong surveillance and new rules must be introduced to **forbid any malpractices concerning the salaries, bonuses and compensation paid to executives** of companies belonging to the financial or non-financial corporate sector that have been bailed-out by a Member State government.

(2) Shareholders: Members believe that shareholders' engagement with the company should be encouraged by **enhancing their role**, but that this involvement should be a **discretionary choice** and never an obligation. Nevertheless, they believe that measures to incentivise long term investment should be considered and also a requirement for full transparency of voting for any borrowed shares, apart from bearer shares. They consider that institutional investor behaviour aimed at creating liquidity and keeping good ratings should be reconsidered, as this solely encourages short-term shareholding by such investors.

The report notes that there is a lack of long-term focus within the market and urges the Commission to review all relevant legislation to assess whether any requirements have inadvertently added to short-termism.

The Commission is called upon to:

- bring forward proportionate proposals for **Europe-wide guidelines on the type of information released** to shareholders in annual company reports; in this context, the report notes that **conflicts of interest**, including those of a potential nature, should always be disclosed and that appropriate action is needed at EU level;
- **amend the Shareholders' Rights Directive** in such a way as to evaluate by what means shareholders' participation can be further enhanced; considers, in this connection, that the role of electronic voting at general meetings of listed companies in order to encourage shareholders' participation, especially with regard to cross-border shareholders, should be analysed by the Commission through an impact assessment;
- ensure further regulation of **proxy advisors**, giving special attention to transparency and conflict-of-interest issues.

Members consider that companies should be **entitled to choose between a name shares regime and a bearer shares regime.** They consider that, if they choose name shares, companies should be entitled to know the identity of their owners and that minimum harmonisation requirements should be set at EU level for the disclosure of material shareholdings.

Lastly, Members consider that the question of employee share ownership schemes is one which should be regulated at Member State level and left to negotiations between employers and employees: the possibility of participating in such a scheme should always be of a voluntary nature.

(3) The 'comply or explain' framework: Members believe that this system is a **useful tool** in corporate governance. They are in favour of compulsory adherence to a national corporate governance code or a Code of Conduct chosen by the company; considers that any deviation from the Code of Conduct should be explained in a meaningful way and that, in addition to this explanation, the alternative corporate governance measure taken should be described and explained.

Lastly, the report stresses the need to achieve **better functioning** of, and compliance with, **existing governance rules and recommendations** rather than imposing binding European corporate governance rules.

Corporate governance framework for European companies

2011/2181(INI) - 29/03/2012 - Text adopted by Parliament, single reading

The European Parliament adopted by 311 votes to 250, with 44 abstentions, a resolution on a corporate governance framework for European companies, in response to the Commission Green Paper on the same issue.

It should be noted that an alternative motion for a resolution by the S&D and Green/ALE Groups was rejected in plenary.

General approach: welcoming the Commission's revision of the EU corporate governance framework initiated by the Green Paper, Parliament regrets, however, that important corporate governance issues such as board decision-making, directors' responsibility, directors' independence, conflicts of interest or stakeholders' involvement have been left out of the Green Paper. It also regrets the Green Paper's focus on the unitary system and disregard for the dual system, which is equally widely represented in Europe.

Members underline the importance of the following issues:

- creating a more **transparent, stable, reliable and accountable corporate sector** in the EU, with improved corporate governance;
- the need for **independent auditing and rules** respecting the different corporate cultures in the EU;
- the importance of creating a more transparent, stable, reliable and accountable corporate sector in the EU, with improved corporate governance;
- that it is a prerequisite that a well-governed company should be accountable and transparent to its employees, shareholders and, where appropriate, to other stakeholders;
- that the **2004 OECD definition of corporate governance**, according to which corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders, should be further promoted;
- that a **basic set of EU corporate governance measures** should apply to all listed companies; these measures should be proportional to the size, complexity and type of the company;
- that initiatives on corporate governance should go hand in hand with the initiatives on **corporate social responsibility** proposed by the Commission.

The Commission is called upon to submit every legislative proposal it considers on corporate governance to **impact assessment**, which should focus both on objectives to be attained and on the need to keep companies competitive.

Boards of directors: the resolution stresses that in unitary systems there should be a **clear demarcation between the duties of the Chair of the Board of Directors and the Chief Executive Officer**; however, it notes that this rule should be proportional to the size and the peculiarities of the company.

The boards must include **independent individuals** with a **mix of skills, experiences and backgrounds**, that this aspect of their composition should be adapted to the complexity of the activities of the company and that it is the responsibility of the shareholders to ensure the right balance of skills in the board. The resolution calls on companies to implement transparent and meritocratic methods in the field of human resources and to develop and promote efficiently men's and women's talents and skills. Moreover, plenary called on the Commission to present, as soon as possible, comprehensive current data on **female representation** within all types of company in the EU and on the compulsory and non-compulsory measures taken by the business sector as well as those recently adopted by the Member States with a view to increasing such representation, and, following this exercise, if the steps taken by companies and the Member States are found to be inadequate, to propose legislation – including quotas – in the course of 2012 to increase female representation in corporate management bodies to 30 % by 2015 and to 40% by 2020, while taking account of the Member States' responsibilities and of their economic, structural (i.e. relating to company size), legal and regional specificities.

Members stress that directors must **devote sufficient time** to the performance of their duties.

The resolution considers that directors' pay rises should be consistent with the long-term viability of their companies. It supports the inclusion in managers' variable remuneration of long-term sustainability components, such as making a percentage of their variable remuneration dependent on the achievement of corporate social responsibility targets, e.g. health and safety in the workplace and employee job satisfaction.

Members believe that strong surveillance and new rules must be introduced to **forbid any malpractices concerning the salaries, bonuses and compensation paid to executives** of companies belonging to the financial or non-financial corporate sector that have been bailed-out by a Member State government. They also encourage disclosure of company remuneration policies and annual remuneration reports, which should be subject to approval by the shareholders' meeting.

Shareholders: Members believe that shareholders' engagement with the company should be encouraged by **enhancing their role**, but that this involvement should be a **discretionary choice** and never an obligation. Nevertheless, they believe that measures to incentivise long term investment should be considered and also a requirement for full transparency of voting for any borrowed shares, apart from bearer shares. They consider that institutional investor behaviour aimed at creating liquidity and keeping good ratings should be reconsidered, as this solely encourages short-term shareholding by such investors.

The resolution notes that there is a lack of long-term focus within the market and urges the Commission to review all relevant legislation to assess whether any requirements have inadvertently added to short-termism.

The Commission is called upon to:

- bring forward proportionate proposals for **Europe-wide guidelines on the type of information released** to shareholders in annual company reports; in this context, the report notes that **conflicts of interest**, including those of a potential nature, should always be disclosed and that appropriate action is needed at EU level;
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- ensure further regulation of **proxy advisors**, giving special attention to transparency and conflict-of-interest issues.

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(3) The 'comply or explain' framework: Parliament believes that this system is a **useful tool** in corporate governance. It is in favour of compulsory adherence to a national corporate governance code or a Code of Conduct chosen by the company and considers that any deviation from the Code of Conduct should be explained in a meaningful way and that, in addition to this explanation, the alternative corporate governance measure taken should be described and explained.

Lastly, the resolution stresses the need to achieve **better functioning** of, and compliance with, **existing governance rules and recommendations** rather than imposing binding European corporate governance rules.