



Global
Corporate
Governance
Forum



THE EU APPROACH TO CORPORATE GOVERNANCE

Essentials and Recent Developments – February 2008

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FOREWORD

Promoting the private sector as an engine of growth, reducing the vulnerability of developing and transition economies to financial crises, and providing incentives for corporations to invest and perform efficiently in a socially responsible manner—these are key priorities for the World Bank Group.

Strengthening corporate governance is essential in achieving these priorities because it creates the necessary climate for investment and economic development. Sound corporate governance practices inspire investor and lender confidence, spur both domestic and foreign investment, and improve corporate competitiveness.

Towards that end, the Global Corporate Governance Forum (the Forum) sponsors regional and local initiatives that address the corporate governance weaknesses of middle- and low-income countries in the context of broader national or regional economic reform programs. The Forum focuses on raising awareness, building consensus, sponsoring research, disseminating best practices, and rendering support and guidance for technical assistance and capacity-building of institutions leading corporate governance reforms.

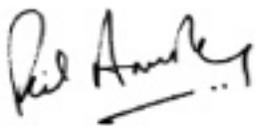
In fulfillment of our mission, we are proud to sponsor this paper on the “EU Approach to Corporate Governance.” We believe this paper will be particularly useful for countries in the region developing corporate governance codes or in the process of revising such codes with the purpose of setting internationally recognized standards and practices of good corporate governance.

The European Union (EU) has achieved a great deal in terms of addressing disclosure, shareholder protection, and board structures and responsibilities since the adoption of its Action Plan for Modernizing European Company Law and Enhancing Corporate Governance in the EU (2003). Yet, candidate and potential candidate countries are not always conversant with EU corporate governance requirements and recommendations.

To facilitate access to current European best practices, this paper provides a brief review of the EU approach to corporate governance including recent developments. Its objective is to build understanding and awareness of the EU corporate governance directives, regulations, best practices, and guidelines and to help candidate and potential candidate countries better access relevant EU information. Beyond EU accession, it is important for countries of the Southeast European region to better comply with EU corporate governance standards to improve trade with EU partners, attract EU investors, and compete with EU companies.

We are grateful to the EU Commission (Company Law, Corporate Governance and Financial Crime, DG Internal Market and Services) for their support and for reviewing the content and accuracy of this paper.

We would like to especially thank Ken Rushton, former Director of Listings at the UK Financial Services Authority, for providing the first draft of this paper, the Forum’s Marie-Laurence Guy and Desislava Radeva for their valuable input, and Marci Schneider for editing the document.



Philip Armstrong
Head: Global Corporate Governance Forum

This paper highlights EU corporate governance essentials that EU candidate and potential candidate countries, as well as countries seeking to increase trade with EU members or attract investors from the EU, should take into account when developing their own corporate governance code and reviewing their corporate governance framework.

BACKGROUND

The background to the current debate in the European Union (EU) on corporate governance begins with the report from the High Level Group of Company Law Experts in 2002. This report focused on corporate governance and the modernization of company law.

Action Plan on Modernizing Company Law and Enhancing Corporate Governance in the EU (2003)

Moving forward, the European Commission issued in May 2003 a Communication titled, “Modernizing Company Law and Enhancing Corporate Governance in the European Union—A Plan to Move Forward.” This Communication outlined the reasons why both company law and corporate governance needed to be updated: the impact of recent financial scandals; the trend of European countries to engage in cross-border operations in the Internal Market; the integration of European capital markets; the rapid development of new information and communication technologies; and, the increase of Member States to the European Union.

At the time, EU Internal Market Commissioner Frits Bolkestein said, *“Company law and corporate governance are right at the heart of the political agenda, on both sides of the Atlantic. That’s because economies only work if companies are run efficiently and transparently. We have seen vividly what happens if they are not: investment and jobs will be lost; and in the worst cases, of which there are too many, shareholders, employees, creditors and the public are ripped off. Prompt action is needed to ensure sustainable*

Company Law and Corporate Governance

“Harmonization of the rules relating to company law and corporate governance, as well as to accounting and auditing, is essential for creating a Single Market for Financial Services and products.

“In the fields of company law and corporate governance, objectives include: providing equivalent protection for shareholders and other parties concerned with companies; ensuring freedom of establishment for companies throughout the EU; fostering efficiency and competitiveness of business; promoting cross-border cooperation between companies in different Member States; and stimulating discussions between Member States on the modernization of company law and corporate governance.”

EUROPEAN COMMISSION, DG Internal Market

public confidence in financial markets. The Action Plan provides a clear and considered framework combining new law where necessary with other solutions. It will help deliver the integrated and modern company law and corporate governance framework which businesses, markets and the public are calling for. The Commission is shouldering its responsibilities: Corporate Europe must shape up and do the same. Working in partnership, we have a unique opportunity to strengthen European corporate governance and to be a model for the rest of the world.”

Other corporate governance initiatives proposed in the Action Plan cover: achieving better information on the role played by institutional investors in corporate governance; addressing the principle of proportionality between capital and control; offering to listed companies the choice between the one-tier and two-tier board structures; and, enhancing directors’ responsibilities for financial and key nonfinancial statements.

The 2006 review of the Action Plan has prioritized the strengthening of shareholders’ rights, but acknowledges that there was a growing sense of regulatory fatigue and the need to pause and allow both businesses and investors more time to digest recent legislation.

In 2007, the Commission published two reports that reviewed how well Member States had implemented the Recommendations on independent directors and directors’ remuneration. The reports find that all Member States have issued corporate governance codes and most codes apply on a comply-or-explain basis. However, the reports identify certain areas where the recommendations’ principles have not been adequately followed.

The Action Plan’s Initial Objectives

- Introduction of an Annual Corporate Governance Statement. Listed companies should be required to include in their annual documents a coherent, descriptive statement covering the key elements of their corporate governance structures and practices.
- Development of a legislative framework aiming at helping shareholders to exercise various rights (for example asking questions, tabling resolutions, voting in absentia, participating in general meetings via electronic means). These facilities should be offered to shareholders across the EU, and specific problems relating to cross-border voting should be solved urgently.
- Adoption of a Recommendation aimed at promoting the role of (independent) non-executive or supervisory directors. Minimum standards on the creation, composition and role of the nomination, remuneration and audit committees should be defined at the EU level and enforced by Member States, at least on a “comply or explain” basis.
- Adoption of a Recommendation on Directors’ Remuneration. Member States should be rapidly invited to put in place an appropriate regulatory regime giving shareholders more transparency and influence, which includes detailed disclosure of individual remuneration.
- Creation of a European Corporate Governance Forum to help encourage coordination and convergence of national codes and of the way they are enforced and monitored.

Codes of Best Practice

With respect to corporate governance, the Commission in 2002 published a comparative study of the Main Codes produced by Member States. This study concluded that the EU should not attempt to develop a pan-European code but rather consider “a certain coordination” of corporate governance codes to encourage further convergence. Convergence should focus both on reducing barriers to cross-border voting by shareholders, and on barriers to information that affect shareholders’ ability to evaluate the governance of companies.

On February 22, 2006, the European Union Corporate Governance Forum (EU CG Forum) strongly endorsed the

view that national corporate governance codes should be implemented under the comply-or-explain principle. But the EU CG Forum stressed the need for this principle to be underpinned by regulation and enforced by shareholders. It pointed out the need for companies to provide meaningful explanations for noncompliance.

The 2006 Directive, amending the Fourth and Seventh Accounting Directives, requires that listed companies publish an annual corporate governance statement which refers to the corporate governance code that is applied by the company and explain whether, and to what extent, the company complies with that code.

BOARD OF DIRECTORS

Recommendation on the Role of Nonexecutive/Supervisory Directors and Supervisory Board Committees (2004)

The Commission formally invited Member States, through a Commission Recommendation, to reinforce the presence and role of independent non-executive directors on listed companies’ boards. Protecting shareholders, employees, and the public against potential conflicts of interest through an independent check on management decisions, constituted an important move to restore confidence in financial markets after a number of high-profile scandals. The non-binding Recommendation concentrates on the role of non-executive or supervisory directors in key areas where executive or managing directors may have conflicts of interest. It includes minimum standards for the qualifications, commitment, and independence of non-executive or supervisory directors.

The main principles in the Recommendation are:

- Boards should comprise a balance of executive and nonexecutive directors so no individual or group of individuals can dominate decision making.
- The Chairman and CEO roles should be separate and the CEO should not immediately become Chairman of either a unitary or a supervisory board.
- Nomination, remuneration and audit committees should be set up and they should make recommendations to the board. The board can delegate decision-making powers to these committees but the board itself must remain fully responsible for its decisions.

- The board should carry out an annual evaluation of its performance, including the competence and effectiveness of each board member and of the board committees.
- The board should report annually on its internal organization, procedures and on its self-evaluation.
- The board should ensure shareholders are kept informed on the affairs of the company, its strategy and on how risks and conflicts of interest are managed.
- The board should determine the knowledge, judgment and experience required on the board. The audit committee, collectively, should have recent and relevant experience of finance and accounting.
- All new directors should receive an orientation program. A skills assessment should be made each year with updates recommended accordingly.
- Each director should devote sufficient time and limit the number of their other commitments.
- A list of criteria for determining the independence of a director was established. However, it is the board that should determine this issue and justify its conclusion in its disclosures.
- Detailed guidance is provided on the composition, role and operation of board committees. The nomination committee should be comprised mainly of independent nonexecutive directors; the remuneration and audit committees should be comprised exclusively of nonexecutive directors with a majority being independent.

Board Director Criteria

- Cannot be an executive or managing director of company or have been in such a position within last five years.
- Cannot be an employee of company, or have been within last three years, unless legally elected as a worker director representative.
- Cannot receive significant additional remuneration to his nonexecutive director's fee, meaning no share options or other performance-related pay.
- Cannot be or represent controlling shareholder.
- Cannot have, or have had in the past year, a significant business relationship with a company, such as being a supplier or customer.
- Cannot be, or have been within last three years, an employee of auditor of company.
- Cannot have significant links with executive directors of company through involvement in other companies or bodies.
- Cannot have served on board of company for more than 3 terms (or more than 12 years).
- Cannot be a close family member of an executive or managing director of the company.

Recommendation on the Remuneration of Directors (2005)

Remuneration is one of the main areas of potential conflicts of interest for executive directors. This and the fact that excessive remuneration has emerged as a prominent feature in many corporate fraud scandals has led the Commission to adopt a Recommendation on directors' remuneration. It recommends that Member States should ensure that listed companies disclose their policy on directors' remuneration and tell shareholders how

EU Recommendations: 2007 Review on Implementation

The European Commission published two reports on Member States' application of EU recommendations on company directors' pay and independence. Both reports conclude that the application of corporate governance standards has improved, but some weaknesses remain.

The report on directors' remuneration shows that transparency standards are widely followed, but in some Member States, it is still not recommended that shareholders vote on this issue.

The report on the role of independent non-executive directors finds that there is real progress in improving governance standards in this field, but some of the recommended standards have not been followed in all Member States. For example, in some Member States, a former Chief Executive Officer of a company can still become its chairman without any "cooling off" period. This undermines the independence of non-executive supervision. Also, some Member States do not recommend a sufficient number of independent board members in remuneration and audit committees.

much individual directors are earning and in what form. Furthermore, listed companies should ensure that shareholders are given adequate control over these matters and share-based remuneration schemes. The Commission's 2004 Recommendations on directors' remuneration provides that:

- Each listed company should publish an annual statement of its remuneration policy and post it to its Website.
- The statement should cover contract terms for executive directors, particularly notice periods and termination payments (if any).
- The remuneration policy should be voted on by shareholders. This vote may either be mandatory or advisory.
- The total remuneration and benefits granted to individual directors should be disclosed in the annual accounts or the remuneration report.
- Incentive share-based schemes for directors, such as share options, should be subject to prior shareholder approval.

The Remuneration Policy Statement

- Explanation of importance of fixed and variable components of directors' remuneration
- Information on performance criteria for share incentives or variable components of remuneration
- Linkage between remuneration and performance
- Parameters and rationale for annual bonus and other noncash schemes
- Description of supplementary pension or early retirement schemes for directors

Disclosure of Individual Directors' Remuneration

- Total salary including any attendance fees
- Remuneration received from any company belonging to the same group
- Profit-sharing and/or other bonus payments
- Additional remuneration for special services outside normal functions
- Compensation paid to any former director paid in the same financial year
- Total value of noncash benefits considered as being remuneration

As regards to share incentive payments or share options:

- Number of share options offered or shares granted in the year
- Number of options exercised and exercise prices or value of interest in share incentive scheme at end of year
- Number of options unexercised at end of year, exercise prices, exercise dates and main conditions for exercise

As regards to directors' supplementary pension schemes:

- Benefit schemes defined: changes in accrued benefits during the year
- Contribution schemes defined: contributions paid or payable by the company during the year

DISCLOSURE

Directive on Company Law, Accounting and Auditing Rules (2007)

A new Directive on the statutory audit of annual and consolidated accounts was adopted in 2006 and must be implemented by June 2008. The new Directive clarifies the duties of auditors and provides for their oversight, independence, and adherence to ethical standards. From a corporate governance perspective, a key provision is Article 41, which requires “public interest entities” (essentially listed companies, credit institutions and insurance companies) to have audit committees. Member States can determine how these committees should be comprised in terms of non-executive directors and how they are appointed. However, at least one member must be independent and be competent in accounting and/or auditing.

In certain public-interest entities, the audit committee functions can be performed by the entire board. If the Chairman is an executive board member, he must not chair the audit committee. The audit committee’s functions include reviewing: the financial reporting process; the effectiveness of internal control, internal audit (where applicable), and risk management systems; the audit of the accounts; and, the independence of the auditor.

The Commission hopes that the Amendments to the 4th and 7th Company Law Directives, which have to be transposed into national laws by 2008, will result in the needed improvements.

The Transparency Directive (2005)

The Transparency Directive replaces and updates parts of existing EU legislation (the ‘Consolidated Admissions and Reporting Directive’). The Directive on transparency obligations of listed companies is designed to improve the quality of information available to investors on companies’ performance, their financial position, and changes in major shareholdings.

Fourth and Seventh Accounting Directives Amended (2006)

This 2006 Directive is designed to enhance confidence in financial statements and annual reports. Most of its provisions are related to accounting. However, there is a requirement for listed companies to publish a discrete corporate governance statement either in their annual report or separately, and for board members to be collectively responsible for the annual accounts and reports. The company will also have to: describe the main features of its internal control and risk management systems in relation to financial reporting; provide information on the composition and operation of the board; and, determine the procedures of shareholders’ meetings and how shareholders’ rights are to be exercised. These provisions must be implemented by September 2008.

The Directive establishes minimum requirements on:

- **Periodic financial reporting:** The Directive aims to ensure that the financial information provided by listed companies is standardized and provided frequently and quickly. A key part of this strategy is the requirement that an issuer of shares must issue either quarterly reports or an interim management statement that, broadly:

- gives a general description of its financial position and performance during the relevant period; and,
- explains material events and transactions and their impact on the financial position.

- **Disclosure of major shareholdings** for issuers whose securities are admitted to trading on a regulated market in the EU. The notification requirement is triggered when the size of holdings reach, exceed or move below certain thresholds stated in the Directive (5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%). The shareholder will be required to inform the issuer, who, in turn, will inform the market.

The Directive also deals with the mechanisms through which this information is to be stored and disseminated.

The Directive came into force on January 20, 2005 and Member States were due to write this measure into law by January 20, 2007. The Directive is a minimum harmonization directive. It allows Member States to impose more severe requirements on “home” issuers, but does not allow Member States to impose more severe requirements on issuers admitted to trading on a regulated market within the “host” Member State’s territory, or on investors in relation to their major shareholding disclosure notification requirements.

Possible Implementation of the Directive at Member State Level

The new Transparency Directive requirements may increase the liability of a listed company and its directors and auditors for the accuracy of the company’s financial reports.

The UK Financial Supervision Authority suggests that listed companies may be able to use “Responsibility Statements:” The persons responsible within the listed company—usually the directors—will be required to state publicly that:

To the best of their knowledge, the annual financial statements are prepared in accordance with the applicable set of accounting standards, and give a true and fair view of the company’s consolidated assets, liabilities, financial position, and profit or loss;

The annual management report includes a fair review of the development and performance of the business and the company’s position, with a description of the principal risks and uncertainties that it faces;

The half-year management report includes a fair review of the important events that have occurred in the first six months of the financial year and their impact on the financial statements, with a description of the principal risks and uncertainties for the remaining six months (there are additional requirements relating to related parties’ transactions).

SHAREHOLDER RIGHTS

Directive on Takeover Bids (2004)

This Directive was scheduled to be implemented by all Member States by May 20, 2006. Eddy Wymeersch, the Chairman of the Committee for European Securities Regulators, welcomed the directive: “It has achieved a very welcome harmonization of the securities regulatory provisions, especially by introducing a rather strict home rule regime along with mutual recognition, and leveling the conditions for bids (irrevocability, disclosure, equal treatment) although regretfully many concepts remain undefined (equitable price, concert action, etc.)”

The purpose of the Takeover Bids Directive is to create a favorable regulatory environment for takeovers and to boost corporate restructuring within the EU. The Directive also increases the protection of minority shareholders. However, since the final Directive was the result of a difficult compromise, some provisions related to the use of defensive measures by companies remain ambiguous.

The key minimum standards introduced by this directive include:

- All shareholders of the same class must receive equal treatment;
- The target company’s shareholders must have sufficient time and information to decide whether to accept an offer;
- The target company’s board must give shareholders guidance on the bid’s effects on the company;
- The board of the offeror company must act in the interest of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;
- False markets must not be created in the securities of the offeror company;
- The bidder may only make an offer if he is sure that he can pay the price; and,
- The takeover process should not unreasonably hinder the target company’s business.

Directive on the Exercise of Shareholders’ Rights (2007)

To improve cross-border voting practices, a Directive was adopted on the exercise of voting rights by shareholders across the EU in 2007. This Directive has to be implemented by September 2009.

Under its provisions, minimum standards have been introduced to ensure that shareholders of companies, whose shares are traded on a regulated market, have timely access to relevant information in advance of general meetings and have the means to vote from a distance. In addition, there are provisions enabling shareholders to ask questions, place items on the general meeting agenda, and table resolutions.

The directive also abolishes a practice referred to as share blocking. This required shareholders to deposit shares at a designated institution for a certain period in advance of general meetings essentially blocking the shares from trading.

Key provisions of this Directive include:

- Minimum notice period of 21 days for most general meetings, which can be reduced to 14 days where shareholders can vote by electronic means and the general meeting agrees to the shortened convocation period;
- Internet publication of the convocation and of the documents to be submitted to the general meeting at least 21 days before it convenes;
- Abolition of share blocking and introduction of a record date in all Member States which may not be more than 30 days before the general meeting;
- Abolition of obstacles on electronic participation to the general meeting, including electronic voting;
- Right to ask questions and the company's obligation to answer questions;
- Abolition of existing constraints on the eligibility of people to act as proxy holder and of excessive formal requirements for the appointment of the proxy holder; and,
- Disclosure of the voting results on the issuer's Internet site.

One-Share, One-Vote: Dropped

In 2006, a review of the Action Plan showed support for addressing the one-share, one-vote proposal through a Recommendation rather than by a Directive. This review was conducted against the backdrop of the Commission's policy of "Better Regulation," which sought to cut red tape for businesses and eliminate outdated requirements.

On October 3, 2007, in the follow-up to the public consultation held in 2006 on future priorities in EU company law Commissioner McCreevy introduced, in front of the European Parliament's Legal Committee, the DG Internal Market's new agenda for the forthcoming years. On the basis of the results of a study and the Commission's impact assessment on the matter, McCreevy announced that he did not envisage to propose any initiative on one-share, one-vote. The study showed that there is no sound causal link between the one-share, one-vote principle and the economic performance of companies. However, some evidence does exist to show that investors perceive these mechanisms negatively, requiring more transparency prior to making their investment decisions. As lots of EU measures had recently been introduced to increase transparency on disproportionate control structures, the Commissioner argued that it was necessary to wait and see what would be the effects of these measures before taking any further step.

The fact that there will be "no action" on the issue of one-share, one-vote was also influenced by strong lobbying from large EU corporations and the general fear of hedge funds in Member States, as well as the appearance of sovereign wealth funds.

Further Recommendations in the Pipeline

In May 2007, the Commission launched a consultation on the need for further measures to supplement the recently adopted Directive on Shareholders' Rights. Initial feedback suggests that the following issues could be addressed through a Recommendation (rather than another Directive):

- For depositary receipts, should these be prohibited from voting without instructions given by the holder unless the holder has expressly given the depositary such discretion?
- Should stock-lending be addressed at the EU level? Pertaining to this issue, the Commission has indicated possible recommendations such as requiring that parties be informed about provisions of stock-lending agreements affecting voting rights attached to transferred, or lent, shares. The usual effect would be that the borrower has the right to vote.
- Shares might only be lent by intermediaries where the investor has agreed to such lending.
- Borrowed shares might not be voted except where the voting rights are exercised on instructions from the lender. Although stock-lending can be used to manipulate voting, this is not usually the main reason for borrowing stock. Arguably the onus should be on the lender to recall borrowed shares for voting purposes. Active investors are more likely to recall stock and vote as part of their ownership responsibilities.
- Stock-lending agreements might require borrowers to return equivalent shares to those borrowed promptly when requested.

SETTING EU CORPORATE GOVERNANCE STANDARDS

Basic Glossary

THE KEY PLAYERS

The European Commission:

The European Commission (EC) is essentially the European Union's executive branch and has the sole right of legislative initiative. It is independent of national governments and represents the European (as opposed to individual Member State) perspective. The Commission proposes legislation to the EU Parliament and the Council of the European Union. Proposed legislation must defend the interests of the Union and its citizens, not those of specific countries or industries. The Commission also seeks the opinions of national parliaments and governments. To get the technical details right, the Commission consults experts through its various committees and groups.

The European Parliament:

Since 1979, the European Parliament (EP) has been directly elected by the EU citizens under a system of population based proportional representation, with each member serving a five-year term. The EP passes European laws—jointly with the Council of the EU in many policy areas. The EP can veto legislation in specific policy areas. The European Parliament has the power of “co-decision” with the Council of the European Union, a power granted in 1993 and expanded in 1999. Parliament does not merely give its opinion in this procedure—it shares legislative power equally with the Council of the EU. The co-decision procedure requires the two bodies to agree on identical text before a proposal becomes law. If the Council and Parliament cannot agree, a special Conciliation Committee is formed. Even if the committee agrees to a joint text, the Parliament may still reject the proposed act by a majority vote of its members.

The European Council:

The Council is the EU main decision-making body and represents the Member States. The Council adopts European laws—jointly with the European Parliament in many policy areas. The European Council comprises heads of States and/or governments and gives political impetus in the process of the construction of the EU.

Consultative Bodies in the field of Corporate Governance:

The Commission has established two permanent consultative bodies to assist the development of corporate governance and company law policies. In addition, the Commission consults widely on individual proposals for legislation. The first standing body is the European Corporate Governance Forum.

The European Corporate Governance Forum was established in 2004 by the Commission “to enhance the convergence of national codes of corporate governance and provide strategic advice to the Commission on policy issues in the field of corporate governance.” The Forum is comprised of 15 nongovernmental experts including regulators, issuers, investors, market practitioners and academics. Commissioner Charlie McCreevy initially expected the Forum to identify priorities for convergence. Yet, more than focusing on convergence, the EU CG Forum developed and shared best practices on corporate governance. The Forum's early work produced papers on the functioning of boards including internal control, comply-or-explain and barriers to the exercise of shareholder rights. In respect of internal control, the EU CG Forum stated that it saw no need to follow the United States' example of introducing a legal obligation for boards to certify the effectiveness of internal control.

In 2005, the Commission established a second consultative body, *the Advisory Group on Corporate Governance and Company Law*, to provide detailed technical advice on preparing corporate governance and company law measures. Like the EU CG Forum, this Advisory Group comprises nongovernmental experts with various professional backgrounds. The Advisory Group is consulted by the Commission on initiatives and its technical work is complementary to the more strategic role of the EU CG Forum. The Group has tended to focus on company law measures.

THE KEY OUTPUTS

Green Paper: A green paper is a discussion document released by the European Commission. European Commission intended to stimulate debate and launch a process of consultation, at European level, on a particular topic. A green paper usually presents a range of ideas and is meant to invite interested individuals or organizations to contribute views and information. It may be followed by a White paper recommendation, an official set of proposals or lead to a new directive.

Position Papers: Position papers are views and information presented to the Commission in response to a consultation process.

Recommendation: A nonbinding act of the EU which explains current EU policy and recommends further Member State actions. Since differing approaches to corporate governance are deeply rooted in national traditions, particular care has been taken to provide for maximum flexibility in the ways Member States can apply the principles in the Recommendation. The Recommendation takes account of efforts already made in Member States and aims by identifying best practices to foster convergence on these issues in the EU. The Commission closely monitors the application of its Recommendations to identify whether additional measures may be desirable in the medium term.

Regulation: An act of the Council or joint act of the Council and the Parliament which has direct and general application in Member States. The Commission may also issue regulations limited to certain sectors. The Commission considers regulations only when it believes an EU-level remedy is necessary for a problem that cannot be solved by national or local governments.

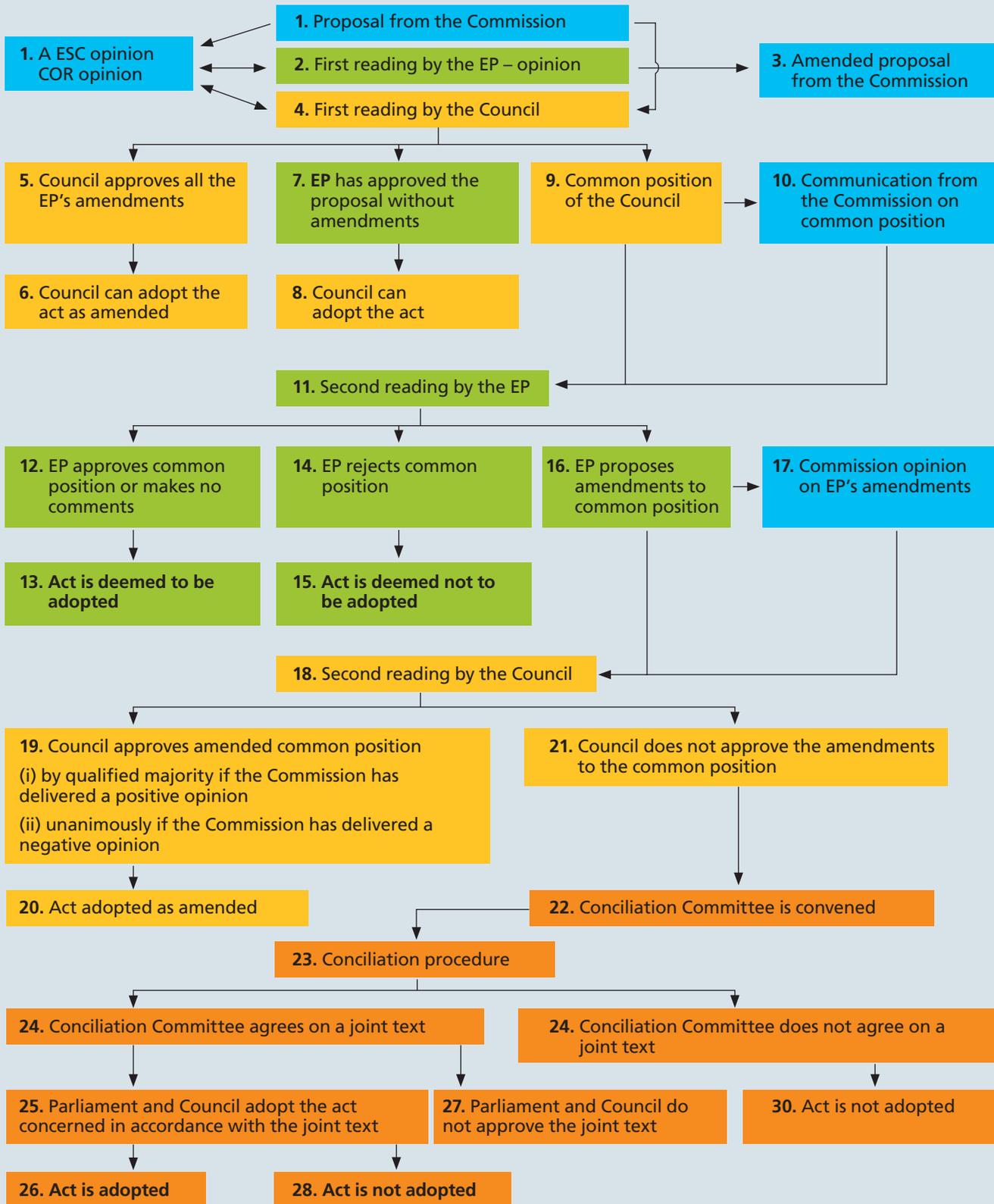
Directive: The most common type of EU legislation, not directly applicable, but may have direct effect; binding upon Member States as to the objectives to be achieved but leaving to the Member States the choice of form and method; preferred means of harmonization of laws; usually enacted by the Commission.

Decisions: are binding in their entirety upon those to whom they are addressed—Member States, companies, or persons.

The EU Legislative Co-decision Making Process

In the field of corporate governance most common type of legislation are Directives which provide the objectives to be achieved but allow member states to chose the form and method of achieving those objectives. Dealing with a growing sense of regulatory fatigue in Member States, the Commission has been advancing a substantial part of the corporate governance agenda through nonlegislative methods—mainly recommendations. The following chart explains the EU legislative co-decision making process which applies to regulations and directives.

THE EU CO-DECISION PROCESS



Source: EU Commission – February 2008
http://ec.europa.eu/codecision/stepbystep/diagram_en.htm

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January 2002 Comparative Study of Corporate Governance Codes by Holly Gregory, Weil, Gotshal & Manges

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http://europa.eu.int/comm/internal_market/en/company/company/modern/index.htm

December 2004 Recommendation on the remuneration of directors and July 2007 report on its application by Member States

http://ec.europa.eu/internal_market/company/directors-remun/index_en.htm

Transparency Directive 2004/109/EC

February 2005 Recommendation on the role of non-executive or supervisory directors and February 2007 report on its application by Member States

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

October 2005 Communication of the Commission: A strategy for the simplification of the regulatory environment

http://ec.europa.eu/enterprise/regulation/better_regulation/simplification.htm

July 2006 Report on consultations for future priorities for Action Plan

http://ec.europa.eu/internal_market/company/docs/consultation/final_report_en.pdf

Amendments to 4th and 7th Company Law Directives 2006/46/EC

Directive on statutory audit of annual and consolidated accounts 2006/43/EC

Directive on the exercise of shareholder rights 2007/36/EC

European Corporate Governance Forum

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

http://ec.europa.eu/internal_market/company/directors-remun/index_en.htm

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



Global
Corporate
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Forum



OUR MISSION:

Established in 1999, the Global Corporate Governance Forum is an IFC multi-donor trust fund facility located in the Corporate Governance and Capital Markets Advisory Department. Through its activities, the Forum aims to promote the private sector as an engine of growth, reduce the vulnerability of developing and transition economies to financial crises, and provide incentives to corporations to invest and perform efficiently in a socially responsible manner.

The Forum sponsors regional and local initiatives that address the corporate governance weaknesses of middle- and low-income countries in the context of broader national or regional economic reform.

OUR FOCUS:

- Raising awareness, building consensus
- Disseminating best practices
- Sponsoring research
- Funding technical assistance and capacity-building

OUR DONORS:

- Canada
- France
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