Corporate Governance and the EU Agenda

Topic

The EU has been very busy in recent months setting up its Corporate Governance Policy, partly through the Action Plan on Modernising Company Law and Enhancing Corporate Governance, partly through other related directives and recommendations.

Corporate Governance (CG) has been high on the agenda for many SRI practitioners. As a matter of fact, Eurosif has wished to stress this interest in its upcoming pension SRI toolkit.

This latest quarterly Eurosif Insider issue focuses on the latest CG developments and thinking at EU level and within some member states, and explains Eurosif's strategy to remain up-to-date on the evolution of CG and to voice the concerns of the SRI community over corporate governance.

Key Issues, Debates and Actions

DEBATES

Last year, The European Commission published the results of its consultation on "Modernising Company Law and Enhancing Corporate Governance: A Plan to Move Forward". The action plan was adopted on 21 May 2003 and sets out a number of proposals designed to strengthen shareholders' rights, reinforce protection of employees and creditors and increase the efficiency and competitiveness of European business. It also proposes a number of corporate governance initiatives aimed at increasing confidence in capital markets. The plan was open to consultation until mid-September 2003 and has been in implementation phase since. Its two key objectives were:

1. The strengthening of shareholders' rights and third parties' protection, and
2. Fostering efficiency and competitiveness within the EU.

On September 23, a joint seminar took place in Brussels under the banner of multiple pension organisation associations: "Corporate Governance in the European Union: Challenges for national organisations and European policy makers".

Various practitioners from different countries¹ presented their cases. Beyond national experience, common conclusions included:

- The need to give shareholders more authority,
- Preference for comply-or-explain as opposed to rules-based codes (such as Sarbanes-Oxley),
- The existence of competition between codes and how they weigh on companies,
- Need for cross learning between countries and joint efforts in parallel with respect for the differences between national systems,
- The need to constantly review and revise national codes in a fast evolving environment,
- The persistence of conflicts of interests and lack of widespread solutions to tackle them,
- The fact that mistrust and scepticism against corporate governance and shareholder activism are now disappearing,
- The need for investors to make their voices heard in regulatory debates on CG.

National agendas remain different, particularly in light of the fact that countries have reached different levels on the path to investor activism. In one expert's analysis, France insists on the value of training board members, The UK is a staunch advocate of independence, while Germany seeks to tackle renewal of board members.

¹ Speakers included Jos von Niekerk, SCGOP, Netherlands – Pierre Bollon, AFG, France – Prof. Dr. Axel von Werder, Organization of the German Corporate Governance Code, Germany – Derek Scott, NAPF, UK and Matti Leppälä, Finnish Pension Alliance TELA, Finland.
With regards to SRI, Corporate Governance and institutional SRI are increasingly becoming linked. More and more investors have come to the realisation that taking into account Social Responsibility and Corporate Governance over the long term is a sound sensible and profitable investment strategy. This was reflected in some of the speakers’ positions, as well as in a speech by Member of European Parliament Ieke Van den Burgh. Mrs Van den Burgh is a leading advocate of CSR, SRI as well as pension issues at the European Parliament, with whom Matt Christensen has met several times.

**ACTIONS**

J-Y Muylle, of the European Commission DG Internal Market, echoed some of these concerns in presenting the Work of the commission on CG.

Some of his key points:
- The Action plan is not the only solution offered by the Commission about CG,
- The EC does not want to produce a corporate governance code but supports convergence,
- The EC doesn’t know the views of stakeholders other than corporations and regulators, because they don’t actively come forward,
- Institutional investors have an active role to play.

In terms of implementation of the action plan on the CG side, he highlighted the following:
- Two recommendations on director’s remuneration and independent non-executive directors. The recommendation on Remuneration includes disclosure of remuneration policy as well as appropriate control mechanisms, disclosure of individual remuneration, and approval of AGM of share-based schemes. The Recommendation on Non-executive directors covers presence, role and profile of candidates.
- Amendments to 4th & 7th accounting directives, under which:
  - A Corporate Governance Statement will now have to be released annually by companies,
  - Transparency of group structures and intra-group relations are required,
  - Collective responsibility of board members for key financial and non-financial information is created.

Projects for the year 2005 include a proposal for a directive on shareholders rights (cross-border voting), with the following aims:
- To facilitate the exercise of some shareholders rights (including right to ask questions) vote in absentia and electronic participation,
- To solve problems to cross border voting relative to different national company laws, chains of intermediaries.

The DG Internal Markets has an ongoing stakeholders consultation on the subject, to which Eurosif is participating.

In addition, the creation of a Corporate Governance Forum was announced on October 18th, at the European Corporate Governance Conference in The Hague. The objectives of this forum include the exchange of ideas and best practice about national CG codes, the identification of weaknesses within EU law and steering towards harmonisation. A list of the Forum’s members is provided at the end of this document.

---

2 Recommendations are not legally binding.
CURRENT POSITIONS

At this same meeting, European Commissioner for the Internal Market Frits Bolkestein spoke about the EC’s position on CG:

“Corporate governance is now high on the European political agenda. This is not just a response to the wave of scandals in the US and in Europe. It is due first and foremost to the fact that businesses which have sound corporate governance practices perform better and are valued more highly. Good corporate governance is an essential prerequisite for the integrity and credibility of our financial institutions, stock exchanges and individual corporations, indeed of our capital markets in their entirety”

As regards the relationship between SRI/CSR and CG, The EU recognises that SRI/CSR & CG are complementary issues, though this fact is not given much visibility in the Action Plan. According to EC representatives, the key issue is how measures will actually be implemented. At the September 23rd meeting, J-Y Muylle stated that SRI/CSR stakeholders have been silent on the Action Plan.

Eurosif position

This last comment highlights one of the key issues regarding Eurosif’s position towards the debate. CG is dealt with by the DG Internal Market, whereas SRI and CSR are covered by the DG Employment and Social Affairs, both of which do not necessarily coordinate on their actions.

The good news is that in September, Eurosif was asked by the EC to submit a suggestion for the inclusion of SEE issues in the proposed Corporate Governance Annual Statement. The Eurosif amendment stated:

’The annual financial report shall comprise: a discussion - as a reflection of the growing trend for companies to report risks and opportunities - on the material social, environmental and ethical issues faced by the company, and the company’s policies for managing them.’

Ultimately, DG Internal Market retained the following wording:

‘Furthermore, where relevant, companies may also provide an analysis of environment and social aspects necessary for an understanding of the company’s development, performance and position”.

In general, Eurosif will try to find how to bring SRI into the domain of the discussion on corporate governance. For example, we are increasingly being asked by pension funds to discuss climate change as a potential issue within the governance debate and not just for SRI.

Future steps

Eurosif hopes to gain credibility with the DG Internal Markets, which has traditionally been opposed and even hostile to the SRI/CSR debate. One of the initial ideas is to arrange a meeting where Eurosif, an MEP and potentially, a pension fund representative go to meet with the Internal Markets group. In the short term, Eurosif also plans to propose an elaborate answer to the consultation on cross-border voting, to be crafted in defence of shareholder activism.
Members of the European Corporate Governance Forum are:

- Antonio Borges (PT), Vice Chairman of Goldman Sachs International and board member for several corporations
- Igor Adam Chalupec (PL), President of the Management Board and CEO of PKN Orien (energy company)
- Bertrand Collomb (FR), Chairman of Lafarge and of ‘Association Française des Entreprises Privées’ (AFEP)
- Gerhard Cromme (DE), Chairman of the Supervisory Board of Krupp-Thyssen, President of the German Corporate Governance Code Commission
- David Devlin (IE), Partner PwC, Chairman of the ‘Fédération des experts comptables Européens’ (FEE)
- Emílio Gabaglio (IT), Former General Secretary of the European Trade Union Confederation
- Jose Maria Garrido Garcia (ES), Head of Legal Service and Secretary to the Governing Council, CNMV (Spanish securities and exchange commission)
- Peter Montagnon (UK), Head of Investment Affairs, Association of British Insurers