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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward

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INTRODUCTION

A dynamic and flexible company law and corporate governance framework is essential for a modern, dynamic, interconnected industrialised society. Essential for millions of investors. Essential for deepening the internal market and building an integrated European capital market. Essential for maximising the benefits of enlargement for all the Member States, new and existing.

Good company law, good corporate governance practices throughout the EU will enhance the real economy:

– An effective approach will foster the global **efficiency and competitiveness of businesses** in the EU. Well managed companies, with strong corporate governance records and sensitive social and environmental performance, outperform their competitors. Europe needs more of them to generate employment and higher long term sustainable growth.

– An effective approach will help to strengthen shareholders rights and third parties protection. In particular, it will contribute to rebuilding European investor confidence in the wake of a wave of recent corporate governance scandals. The livelihood of millions of Europeans, their pensions, their investments are tied up in the proper, responsible performance and governance of listed companies in which they invest.

Scope

This Communication outlines the approach that the Commission intends to follow specifically in the area of **company law and corporate governance.**

Achieving the objectives pursued (fostering efficiency and competitiveness of business, and strengthening shareholders rights and third parties protection) requires a **fully integrated approach**.

Related initiatives, forming part of this integrated approach but not part of this Action Plan, include:

– **The Financial Services Action Plan[1] of 1999**, which confirmed the overall objectives which should guide the financial services policy at EU level and set out a framework for an integrated capital market by 2005;

– **The Financial Reporting Strategy[2] of 2000**, which seeks to achieve high quality financial reporting through the adoption of a common set of accounting standards and the development of a proper enforcement system, which led to the adoption in 2002 of the Regulation on the application of the international accounting standards;

– **The Communication on Corporate Social Responsibility[3] of 2002**, which addresses the social and environmental dimension of business in a global economy and led to the setting

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[1] Financial Services: Implementing the Framework for financial markets - Action Plan, Communication of the Commission, COM (1999) 232, 11.05.99.

[2] EU Financial Reporting Strategy: the way forward, Communication of the Commission, COM (2000) 359, 13.06.00.

[3] Corporate Social Responsibility: A business contribution to Sustainable Development, Communication of the Commission, COM (2002) 347, 02.07.02. The European Multi-Stakeholder Forum on CSR brings

up of a European Multi-Stakeholder Forum with a view to promoting voluntary social and environmental practices of business, linked to their core activities, which go beyond their existing legal obligations;

– The **Communication on Industrial Policy in an Enlarged Europe**[4] of 2002, which addresses the need for EU industry to achieve a more sustainable production structure as a driver of growth and productivity.

– **The Communication on the priorities for the statutory audit in the EU**, which is published together with the present Communication and which covers an EU policy approach aimed at ensuring audit quality and public confidence in the audit profession. It covers issues like the use of ISA's (International Standards on Auditing), public oversight of auditors, and the modernisation of the Eighth Company Law Directive into a comprehensive principles-based approach.

Responding to the High Level Group's report

On 4 November 2002, **a High Level Group of Company Law Experts** appointed by Commissioner Bolkestein in September 2001 and chaired by Jaap Winter presented its Final Report on "A modern regulatory framework for company law in Europe". This report focused on corporate governance in the EU and the modernisation of European Company Law. **The Competitiveness Council** (30 September 2002) invited the Commission to organise an in-depth discussion on the forthcoming report and to develop – in co-ordination with Member States – an Action Plan for Company Law, including Corporate Governance, as soon as is feasible, declaring its intention to deal with the Action Plan as a matter of priority. The Ecofin Council has also shown a major interest in this work.

This Communication is the **Commission's response**. It explains why the European regulatory framework for company law and corporate governance needs to be modernised. It defines the key policy objectives which should inspire any future action to be taken at EU level in these areas. It includes an action plan, prioritised, over the short, medium and long term. It indicates which type of regulatory instrument should be used[5], and by when.

Guiding political criteria

In developing this Action Plan, the Commission has paid particular attention to the need for any regulatory response at European level to respect a number of guiding criteria:

– It should fully respect the **subsidiarity and proportionality** principles of the Treaty and the diversity of many different approaches to the same questions in the Member States, while at the same time pursuing clear ambitions (strengthening the single market and enhancing the rights of shareholders and third parties);

– It should be **flexible in application, but firm in the principles**. It should concentrate on priorities; be transparent; and subject to proper due process and consultation;

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together representative organisations of business, trade-unions and civil society. It will present in 2004 a report about its works to the Commission, which should then make an evaluation of its results, decide on its future and consider any other appropriate initiative.

[4] Industrial Policy in an Enlarged Europe, Communication of the Commission, COM (2002) 714, 11.12.02.

[5] When a legislative instrument is considered, this means that the action envisaged requires either the adoption of a new legislative proposal or the modification of one or several existing legislative instruments.

– It should help **shape international regulatory developments**. The EU must define its own European corporate governance approach, tailored to its own cultural and business traditions. Indeed, this is an opportunity for the Union to strengthen its influence in the world with good, sensible corporate governance rules. Corporate governance is indeed an area where standards are increasingly being set at international level, as evidenced by the recent developments observed in the United States. **The Sarbanes-Oxley Act**, adopted on 30 July 2002 in the wave of a series of scandals, delivered a rapid response. The Act unfortunately creates a series of problems due to its outreach effects on European companies and auditors, and the Commission is engaged in an intense regulatory dialogue with a view to negotiating acceptable solutions with the US authorities (in particular the Securities and Exchange Commission). In many areas, the EU shares the same broad objectives and principles of the Sarbanes-Oxley Act and in some areas robust, equivalent regulatory approaches already exist in the EU. In some other areas, new initiatives are necessary. Earning the right to be recognised as at least "equivalent" alongside other national and international rules is a legitimate and useful end in itself.

1. MODERNISING COMPANY LAW AND ENHANCING CORPORATE GOVERNANCE: THE EU ACQUIS AND THE NEED FOR NEW INITIATIVES

1.1.The EU Company Law Acquis

Historically, most of the initiatives taken at EU level in the area of company law have been based on **Article 44 (2) g (ex 54) of the Treaty** establishing the European Community. This Article, which appears in the Chapter devoted to the right of establishment, requires the European institutions to attain freedom of establishment, *"by co-ordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 48 (ex 58), with a view to making such safeguards equivalent throughout the Community"*.

This Article has been interpreted to include two important grounds for the adoption of EU initiatives in the area of company law:

a) **facilitating freedom of establishment of companies**: the harmonisation of a number of minimum requirements makes it easier for companies to establish themselves in other Member States where the regulatory framework is similar;

b) **guaranteeing legal certainty in intra-Community operations**, where the presence of a number of common safeguards is key for the creation of trust in cross-border economic relationships.

Over the years, the EU institutions have taken a number of initiatives in the area of company law, many leading to **impressive achievements**[6]. Between 1968 (adoption of the First Company Law Directive) and 1989 (adoption of the Twelfth Company Law Directive), nine Directives and one Regulation were adopted. Although the exact situation may differ from one Member State to the other, these European measures have had an **important impact** on national company law. Moreover, their influence was not limited to the types of companies expressly covered in the Directives, because many Member States decided to extend their provisions to other legal forms.

Over the last ten years, the EU company law legislative process has been characterised, in the wake of the Maastricht Treaty of 1992, by more political deference to national law (with a higher number of references to national rules in the legislative proposals). This **more flexible approach** to harmonisation made possible, in particular, the adoption of the European Company Statute (Societas Europaea), in October 2001.

1.2.Reasons for new initiatives at EU level

Now is the right time to give a fresh and ambitious impetus to the EU company law harmonisation process. New initiatives, aiming either at modernising the existing EU company law instruments or at completing the EU framework with a limited number of new, tailored instruments, are needed for the following reasons:

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6 See in Annex 2 the table of existing and proposed European legal instruments in the area of company law.

- **Making the most of the Internal Market**: the growing trend of European companies to operate cross-border in the Internal Market calls for common European company law mechanisms, inter alia, to facilitate freedom of establishment and cross-border restructuring.

- **Integration of capital markets**: dynamic securities markets are vital to Europe's economic future[7]. This requires giving both issuers and investors the opportunity to be far more active on other EU capital markets and to have confidence that the companies they invest in have equivalent corporate governance frameworks. Listed companies want a more coherent, dynamic and responsive European legislative framework.

- **To maximise the benefits of modern technologies** : the rapid development of new information and communication technology (video conferencing, electronic mail and above all the Internet) is affecting the way company information is stored and disseminated[8], as well as the way corporate life is conducted (e.g. virtual general meetings, video-link board meetings, exercise of cross-border voting rights).

- **Enlargement:** the forthcoming enlargement of the EU to 10 new Member States is another gilt-edged reason to revisit the scope of EU company law. The new member countries will increase the diversity of the national regulatory frameworks in the EU, underlying further the importance of a principles-based approach able to maintain a high level of legal certainty in intra-Community operations. In addition to that, initiatives to modernise the EU Acquis will become more urgent than ever to ease the rapid and full transition of these countries to becoming fully competitive modern market economies.

- **Addressing the challenges raised by recent events:** Recent financial scandals have prompted a new, active debate on corporate governance, and the necessary restoration of confidence is one more reason for new initiatives at EU level. Investors, large and small, are demanding more transparency and better information on companies, and are seeking to gain more influence on the way the public companies they own operate. Shareholders own companies, not management - yet far too frequently their rights have been trampled on by shoddy, greedy and occasionally fraudulent corporate behaviour. A new sense of proportion and fairness is necessary.

2. KEY POLICY OBJECTIVES

The Commission considers that future actions at EU level in the area of company law should seek as much as possible to meet the following two policy objectives.

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[7] See "Quantification of the Macro-Economic Impact of Integration of EU Financial Markets", Final Report to the European Commission – Directorate-General for the Internal Market by London Economics (in association with PricewaterhouseCoopers and Oxford Economic Forecasting), 12 November 2002, http://europa.eu.int/comm/internal_market/en/finances/mobil/overview.htm

[8] See in this respect the Proposal of June 2002 for a Directive amending the First Company Law Directive, as regards disclosure requirements in respect of certain types of companies, which introduces modern technologies in trade registers. The proposed modifications would allow full advantage to be taken of modern technologies: companies would be able to file their documents and particulars either by paper means or by electronic means, and interested parties would be able to obtain copies by either means.

2.1. Strengthening shareholders rights and third parties protection

Ensuring effective and proportionate protection of shareholders and third parties must be **at the core of any company law policy**. A sound framework for protection of members and third parties, which properly achieves a **high degree of confidence** in business relationships, is a fundamental condition for business efficiency and competitiveness. In particular, an effective regime for the protection of shareholders and their rights, protecting the savings and pensions of millions of people and strengthening the foundations of capital markets for the long term in a context of diversified shareholding within the EU, is essential if companies are to raise capital at the lowest cost.

Maintaining efficient protection of members and third parties will be even more important in the future, in view of the **increasing mobility of companies** within the EU.

To allow European companies to reap the benefits of the unified Internal Market and of the integrating European capital market, ensuring adequate protection of members and third parties should be organised along the following lines:

- The Commission considers firstly that some new tailored initiatives should be taken with a view to enhancing **shareholder rights** and clarifying management responsibilities; and secondly the provisions related to the **protection of creditors** should be modernised with a view to maintaining a high quality framework (e.g. with respect to capital maintenance and alteration).

- A proper **distinction should be made between categories of companies**. A more stringent framework is desirable for listed companies[9] and companies which have publicly raised capital. They should be subject to a certain number of appropriate detailed rules, in particular in the area of disclosure. With respect to other companies, regulatory initiatives should take full account of both their form and size, allowing a more flexible framework for SME's (in the same way as tailored deregulation initiatives have been taken at national level).

- **Modern technologies** can significantly help members and third parties to exercise their rights effectively. At a minimum, company law should enable and encourage as much as possible the use of up-to-date information and communication technologies by companies in their various relationships with members and third parties. The Commission furthermore considers that proper attention must be paid to specific areas where the protection of shareholders and third parties may make it necessary to compel companies to use modern technologies. However, the time has not come yet where the use of modern technologies should be imposed by

[9] The words "listed companies" used in the present Communication cover the companies whose securities are admitted to trading on a regulated market within the meaning of Council Directive 93/22/EEC (OJ L 41, 11.06.1993, p. 27, as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27)) in one or more Member States. The present Action Plan provides where necessary explicit information on the scope of the various actions proposed. In short, the actions presented in the Corporate Governance Section in principle cover listed companies, although some of them are considered to be usefully applicable also to non listed companies. The actions presented in the other sections are generally applicable to all companies, except for the section on pyramids which by nature covers listed companies only.

companies systematically on all members and third parties systematically without the necessary safeguards

- The development of a sound economy requires a high degree of confidence in the relationships between the various actors involved, so that the protection of members and third parties will be ensured by a limited number of measures aimed at **combating fraud and abuse** of legal forms. Such measures should be carefully designed, with a view to avoiding that they unduly hinder the development and use of efficient company law structures and systems, which the promotion of efficient and competitive business requires.

2.2.Fostering efficiency and competitiveness of business

Business efficiency and competitiveness, which are crucial components of economic growth and job creation, depend on many factors, one of which is a sound framework of company law. Key to the achievement of this objective is the setting up of a proper balance between actions at EU level and actions at national level. Some company law rules are likely to be best dealt with, and updated, more efficiently at national level, and some competition between national rules may actually be healthy for the efficiency of the single market.

With due respect of the subsidiarity and proportionality principles, business efficiency and competitiveness should be promoted along the following lines:

- EU initiatives in the area of company law should certainly address a number of specific **cross-border issues** (e.g. cross-border merger or transfer of seat, cross-border impediments to the exercise of shareholders rights…), where Community action may be the only way to achieve the pursued objectives.

- In addition to these specific cross-border issues, the necessary attention should be paid to the other initiatives which the promotion of business efficiency and competitiveness requires. As stated above, a certain degree of harmonisation of **defined national issues** reduces legal uncertainties and can thereby significantly enhance business efficiency and competitiveness.

- **Flexibility** should be available to companies as much as possible: where systems are deemed to be equivalent, maximum room should be left open to the freedom of the parties involved.

3. An EU Action Plan

Achieving the above policy objectives requires a number of initiatives to be taken at EU level in the coming years. The following approach is proposed:

– **Distinguishing the actions in three phases** (short term, medium term, long term), based on clear priorities.

– **Expert consultation** should be an integral part of the preparation of initiatives at EU level in the area of company law and corporate governance. The Commission therefore will regularly seek advice from representatives of Member States, as is the case of the current Group of Company Law National Experts, but also from representatives of the business and the academic sectors, to provide the necessary external input.

– This Communication will be open for public consultation until 31 August 2003. An **open, public consultation** will also be organised where appropriate in the future on the major initiatives following from the Action Plan.

– With respect specifically to corporate governance, a European Corporate Governance Forum will be convened once or twice a year to contribute to co-ordinating the corporate governance efforts of Member States, as is explained in Section 3.1.4. below.

The present Action Plan identifies the nature and the scope of the actions which appear necessary, proposes the type of regulatory instrument which should be used, and establishes clear priorities for the short, medium and long term.

3.1.Corporate Governance

Corporate Governance, which can be defined in many ways, is usually understood as **the system by which companies are directed and controlled**[10]. It is, in the light of the recent corporate scandals, now a major issue globally. Poor corporate governance performance, by some companies, has greatly undermined confidence in capital markets.

Within the EU, Member States have different systems of corporate governance, which reflect their different cultures and the various views about the roles of corporations and the way in which their industry should be financed. Over the last years, corporate governance has been the subject of an increasingly intense debate. **Forty or so corporate governance codes relevant to the European Union have been adopted over the last decade**, at national or international level, with the aim of better protecting the interests of shareholders and/or stakeholders.

[10] Cadbury Report, December 1992. For a more comprehensive definition, see for example the OECD Principles of 1999: "Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined." Corporate governance essentially focuses on the problems that result from the separation of ownership and control, and addresses in particular the principal-agent relationship between shareholders and directors.

Differences in national corporate governance arrangements may create uncertainty and costs for both issuers and investors, which need to be addressed to promote an efficient integration of EU capital markets. As announced in its 1999 Financial Services Action Plan, the Commission launched in 2001 a review of the main corporate governance codes relevant to the EU. The **full comparative study**, prepared for the Commission by Weil, Gotshal & Manges LLP, was finalised in March 2002[11]and concluded **that the EU should not devote time and effort to the development of a European corporate governance code**: the study identified as a more valuable area for the European Commission to focus its efforts on the reduction of legal and regulatory barriers to shareholder engagement in cross-border voting ("participation barriers") as well as the reduction of barriers to shareholders ability to evaluate the governance of companies ("information barriers").

The need for a European code and for additional disclosure of corporate governance practices, as well as a series of additional issues raised by the **Oviedo Council in April 2002** in the wake of the US scandals (the role of non-executive directors and of supervisory boards, management remuneration, management responsibility for financial statements, and auditing practices), were also considered by the **High Level Group of Company Law Experts**. In its Final Report, it confirmed that there is no need for an EU corporate governance code.

In this line of thinking, the Commission observes, firstly, that the main differences between Member States are found in differing company law and securities regulation, as opposed to the corporate governance codes which, according to the March 2002 study, show a remarkable degree of convergence, and, secondly, that the existence of many codes in the EU is not generally perceived as a difficulty by issuers (many issuers continue to be active primarily on their domestic market; when they are active on other markets, they are faced with codes that are pretty similar; and in the rare instances where codes provisions are divergent, the "comply or explain" principle offers a satisfactory solution).

Moreover the Commission considers that:

a) the adoption of a European code would not achieve full information for investors about the key corporate governance rules applicable to companies across Europe, as these rules would still be based on - and part of - national company laws that are in certain respects widely divergent;

b) the adoption of such a code would not contribute significantly to the improvement of corporate governance in the EU, as this code would have either to allow for many different options or confine itself to abstract principles. Trying to harmonise all the elements of a European code would take years and would not be achievable in a reasonable timeframe.

There is nevertheless an active role for the EU to play in corporate governance, because some specific rules and principles need to be agreed at EU level in Directives or Recommendations and a certain co-ordination of corporate governance

[11] Comparative Study of the Corporate Governance Codes relevant to the European Union and its Member States : http://europa.eu.int/comm/internal_market/en/company/company/news/corp-gov-codes-rpt_en.htm

codes in the EU should be organised to encourage further convergence and the exchange of best practice.

Therefore at this stage the Commission considers that:

-There is little indication that the development of a European corporate governance code as an additional layer between principles developed at the international level and codes adopted at national level would offer significant added value. In that respect, the Commission notes that corporate governance is now at the forefront of the activities of the OECD, which recently decided to revise its corporate governance principles of 1999 with the aim of adopting a modernised version of these principles in 2004. The Commission is taking an active part in this exercise.

-A self-regulatory market approach, based solely on non-binding recommendations, is clearly not always sufficient to guarantee the adoption of sound corporate governance practices. Only in the presence of a certain number of made-to-measure rules, markets are able to play their disciplining role in an efficient way. In view of the growing integration of European capital markets, **a common approach should be adopted at EU level with respect to a few essential rules and adequate co-ordination of corporate governance codes should be ensured**.

More specifically, the Commission, largely in line with the High Level Group's suggestions, intends to proceed along the following lines[12].

3.1.1. Enhancing Corporate Governance disclosure

Annual Corporate Governance Statement

Listed companies should be required to include in their annual report and accounts a coherent and descriptive statement covering the key elements of their corporate governance structure and practices, which should at least include the following items:

a) the operation of the shareholder meeting and its key powers, and the description of shareholder rights and how they can be exercised;

b) the composition and operation of the board and its committees[13];

c) the shareholders holding major holdings, and their voting and control rights as well as key agreements;

d) the other direct and indirect relationships between these major shareholders and the company;

e) any material transactions with other related parties;

[12] In developing its approach, the Commission has paid particular attention to the following needs: considering where possible a) the use of alternatives to legislation, and b) the preference to be given to disclosure requirements (because they are less intrusive in corporate life, and they can prove to be a highly effective market-led way of rapidly achieving results).

[13] In this respect, it is considered essential for the restoration of public confidence that proper information is given on the way in which the company has organised itself at the highest level to establish and maintain an effective internal control system.

f) the existence and nature of a risk management system;

g) and a reference to a code on corporate governance, designated for use at national level, with which the company complies or in relation to which it explains deviations.

A proposal for a Directive containing the principles applicable to such an annual corporate governance statement, which should appear prominently in the annual documents published by listed companies, is regarded by the Commission as a priority for the short term, so as to rapidly allow market pressures to be better exerted. The definition of these principles will properly take into account the related requirements present in existing (e.g. major holdings[14]) or proposed (e.g. take-over bids) instruments.

Information about the role played by institutional investors

Institutional investors should be obliged:

a) to disclose their investment policy and their policy with respect to the exercise of voting rights in companies in which they invest;

b) to disclose to their beneficial holders at their request how these rights have been used in a particular case.

Such requirements would not only improve the internal governance of institutional investors themselves, but would also enhance participation by institutional investors in the affairs of the companies in which they invest. A requirement for institutional investors to systematically exercise their voting rights is not considered desirable, in view of its potential counterproductive effects (due to a lack of time or resources, institutional investors might simply vote in favour of any proposed resolution to fulfil the requirement).

Institutional investors have an important role to play in the governance of companies in which they invest. Fostering this role will require amendments to a series of existing legal texts (relating to insurance companies, pension funds, mutual and other investment funds, …), and even more importantly the introduction of such a requirement would deliver its full effects only once the problems related to cross-border voting will have been solved. The Commission therefore intends to take the necessary steps in the medium term.

3.1.2. Strengthening shareholders' rights

Access to information

Shareholders of listed companies should be provided with electronic facilities to access the relevant information in advance of General Meetings. This issue is currently addressed by the Proposal for a Transparency Directive, which essentially

[14] See Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on securities (Title IV – Chapter III "Obligations relating to the information to be published when a major holding in a listed company is acquired or disposed of").

enables listed companies to use electronic means to inform their shareholders[15] and contains specific provisions guaranteeing a timely access to regulated information when securities are listed in another Member State than the home Member State[16]. The Commission considers this solution as a significant and proportionate first step, which does not preclude the adoption of further measures (which would generally require listed companies to use electronic means to inform their shareholders) in the medium term, if this looks desirable in the light of the implementation of the Transparency Directive (which itself contains a revision clause).

Other shareholders' rights

There is a need for enhancing the exercise of a series of shareholders' rights in listed companies (right to ask questions, to table resolutions, to vote in absentia, to participate 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. The Commission considers that the necessary framework should be developed in a Directive, since an effective exercise of these rights requires a number of legal difficulties to be solved. In view of the important benefits expected from such a framework, the Commission regards the relevant proposal as a priority for the short term.

Shareholder democracy

Strengthening shareholders' rights should be based essentially on a) the provision of comprehensive information on what the various existing rights are and how they can be exercised and b) the development of the facilities necessary to make sure that these existing rights can be effectively exercised. This approach is fully consistent with the OECD Principles of Corporate Governance[17].

The Commission considers that there is a strong medium to long term case for aiming to establish a real shareholder democracy in the EU. The Comparative Study of Corporate Governance Codes relevant to the EU evidenced that corporate governance codes tend to support the one share / one vote principle, although many codes favour some flexibility in this respect. The hardest line is taken by the codes issued by bodies affiliated with investors, which clearly do not support the issuance of shares with reduced or no voting rights. The Commission nevertheless observes that any initiative in this direction, which would give further effect to the principle of proportionality between capital and control advocated by the High Level Group in its First Report on issues related to take-over bids, requires prior study. The Commission therefore intends to undertake a study, in the short to medium term, on the consequences which such an approach would entail.

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[15] The home Member State shall allow issuers the use of electronic means for the purposes of conveying information to shareholders, provided such a decision is taken in a general meeting and meets a series of conditions, including the individual consent of the shareholder concerned (See Article 13).

[16] A host Member State may require issuers: a) to publish regulated information on their Internet sites, and b) to alert any interested person, without delay and free of charge, to any new disclosure or any change to regulated information which has already been published (See Article 17).

[17] See the relevant statements, about disclosure (Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed) and about exercise of rights (shareholders should have the opportunity to participate effectively and vote in general shareholder meetings).

3.1.3. Modernising the board of directors

Board composition

In key areas where executive directors clearly have **conflicts of interests** (i.e. remuneration of directors, and supervision of the audit of the company's accounts), decisions in listed companies should be made exclusively by **non-executive or supervisory directors** who are in the majority independent. With respect to the nomination of directors for appointment by the body competent under national company law, the responsibility for identifying candidates to fill board vacancies should in principle be entrusted to a group composed mainly of executive directors, since executive directors can usefully bring their deep knowledge of the challenges facing the company and of the skills and experience of the human resources grown up within the company. Non-executive directors should, nonetheless, also be included and specific safeguards should be put in place to deal with conflicts of interests when they arise, for example when a decision has to be made on the reappointment of a director.

These requirements should be enforced by Member States at least on a "comply or explain" basis. Certain minimum standards of what cannot be considered to be independent should be established at EU level. With a view to fostering a concrete and active role for non executive or supervisory directors, particular attention will be paid to the issue of the number of mandates that may be held concurrently. Moreover, the impact of interlocking directorships on the independence of directors should be properly addressed in the minimum standards to be established.

The Commission regards these measures as key to the restoration of confidence in the markets, and therefore intends to adopt a Commission Recommendation to this effect in the short term.

Such a Recommendation will define minimum standards applicable to the creation, composition and role of the **nomination, remuneration and audit committees**. In view of the recent accounting scandals, special emphasis will be placed on the audit committee (or equivalent body), with a view to fostering the key role it should play in supervising the audit function, both in its external aspects (selecting the external auditor for appointment by shareholders, monitoring the relationship with the external auditor including non-audit fees if any) and its internal aspects (reviewing the accounting policies, and monitoring the internal audit procedures and the company's risk management system)[18].

The High Level Group further recommended that at least listed companies in the EU should generally have the option between a **one-tier board structure** (with executive and non-executive directors) **and a two-tier board structure** (with managing directors and supervisory directors). The Commission welcomes the idea to offer additional organisational freedom to listed companies, but recognises that the implications of such a proposal should be carefully studied. Much has to be learned in this respect from the adaptation of national law to the Regulation and the Directive

[18] In developing the minimum standards applicable to the audit committee, appropriate attention will be paid to a) the access it must have to the relevant information (there might be a scope for specific consideration of the need for greater legal protection for whistleblowers) and b) the extent to which transparency on its activities is desirable.

on the European Company Statute. The Commission therefore proposes that this recommendation from the High Level Group should be followed up in the medium term.

Directors' remuneration

Shareholders should be able to appreciate fully the relation between the performance of the company and the level of remuneration of directors, both ex ante and ex post, and they should be able to make decisions on the remuneration items linked to the share price. Agreeing with the High Level Group, the Commission considers that an appropriate regulatory regime should be composed of **four key items** (disclosure of remuneration policy in the annual accounts, disclosure of details of remuneration of individual directors in the annual accounts, prior approval by the shareholder meeting of share and share option schemes in which directors participate, proper recognition in the annual accounts of the costs of such schemes for the company).

In order to promote a swift application of such a regime, a Commission Recommendation should be adopted to this effect. The Commission regards this action as key to the restoration of confidence, and intends to adopt such a Recommendation in the short term and to closely monitor its application with a view to identifying whether any further additional rulemaking may be desirable in the medium term.

Directors' responsibilities

With a view to enhancing directors' responsibilities, the **collective responsibility** of all board members for financial and key non financial statements (including the annual corporate governance statement mentioned above in Section 3.1.1.) should be confirmed as a matter of EU law. The Commission considers that such a confirmation in framework provisions constitutes a first step which may be achieved rapidly, and intends to take the necessary initiatives in the short term.

The High Level Group made several other recommendations designed to enhance directors responsibilities : a) introduction of a **special investigation right**, whereby shareholders holding a certain percentage of the share capital should have the right to ask a court or administrative authority to authorise a special investigation into the affairs of the company; b) development of a **wrongful trading rule**, whereby directors would be held personally accountable for the consequences of the company's failure, if it is foreseeable that the company cannot continue to pay its debts and they don't decide either to rescue the company and ensure payment or to put it into liquidation; c) imposition of **directors' disqualification** across the EU as a sanction for misleading financial and non-financial statements and other forms of misconduct by directors. The Commission supports these ideas, whose implementation requires further analysis, and therefore intends to present the relevant proposal for a Directive in the medium term.

3.1.4. Co-ordinating corporate governance efforts of Member States

The Commission shares the view of the High Level Group that **the EU should actively co-ordinate the corporate governance efforts of Member States** through their company laws, securities laws, listing rules, codes, or otherwise. In particular, each Member State should progress towards designating a code of corporate governance, designated for use at national level, as the code with which listed companies subject to their jurisdiction are to comply or in relation to which they are to explain deviations. Co-ordination should not only extend to the making of these national codes, but also to the procedures Member States have in place to monitor and enforce compliance and disclosure. Member States should participate in the co-ordination process set by the EU, but the process itself should be voluntary and non-binding with a strong involvement of market participants.

The comparative study of codes relevant to the EU concluded one year ago that **these codes show a remarkable degree of convergence**. The Commission nevertheless observes that such a situation may change rapidly: several Member States are currently engaged in important policy initiatives, and the EU will soon be enlarged by 10 new Member States. In addition, standards are increasingly set at the international level and they should be implemented in Member States in a consistent way.

For these reasons, the Commission regards it important to encourage the co-ordination and convergence of national codes through regular high level meetings of the European Corporate Governance Forum. Participants to such a Forum, which could meet once or twice a year, will comprise representatives from Member States, European regulators (including CESR), issuers and investors, other market participants and academics. Interested MEP's will also be invited to present their views. The Forum will be chaired by the Commission.

3.2.Capital Maintenance and Alteration

The Second Company Law Directive adopted by the Council on 13 December 1976 in respect of the formation of public limited liability companies and the maintenance and alteration of their capital is one of the cornerstones of European company law. It imposes a minimum legal capital to public limited liability companies, and contains a number of detailed provisions aiming at protecting shareholders and creditors, which apply inter alia to the formation stage, to distributions to shareholders, to acquisitions of own shares, to increases in capital and to reductions in capital.

In 1999, a **Report by the Company Law SLIM Group** concluded that the capital maintenance regime organised by the Second Directive could be simplified on a limited number of points, and presented several proposals to this end[19]. From the discussions that followed the presentation of this SLIM Report, it appeared that the implementation of many of these recommendations required further examination.

The High Level Group of Company Law Experts confirmed that most of the SLIM Group proposals were indeed worth implementing and gave some guidance in this respect. In addition, the High Level Group formulated a few additional suggestions aiming at modernising the Second Directive. The Commission considers that a **simplification of the Second Directive** on the basis of these proposals and

[19] The topics covered by the SLIM Report were as follows: removal of the requirement for an expert opinion on contributions in kind in defined circumstances, introduction of no par value shares, simplification of the rules applicable to withdrawal of shares, simplification of the rules applicable to acquisition of own shares, reduction of the scope of the prohibition of financial assistance, simplification of the rules applicable to pre-emptive rights.

recommendations would significantly contribute to the promotion of business efficiency and competitiveness without reducing the protection offered to shareholders and creditors. A proposal to amend the Second Directive along these lines is therefore regarded as a priority for the short term.

The High Level Group further suggested that adequate protection of shareholders and creditors might be achieved, possibly even more effectively, with the introduction at a later stage of an **alternative regime** which would not be based on the concept of legal capital. This alternative regime, whose main lines are briefly outlined by the Group[20], could be offered as an option to Member States who should be able to freely decide to change to the new regime or to retain the Second Directive rules amended as suggested above.

The Commission considers that, before deciding to introduce an alternative regime which would fundamentally depart from the capital maintenance regime currently organised by the Second Directive, further work is needed as to both the exact characteristics of a possible alternative regime and its ability to achieve an effective protection of shareholders and third parties. **A study into the feasibility of an alternative to the capital maintenance regime** will be launched by the Commission in the medium term. The study will have to identify in particular the exact benefits that an alternative regime would offer in comparison with the Second Directive rules amended in the short term.

3.3.Groups & Pyramids

The High Level Group of Company Law Experts pointed out that groups of companies, which today are frequent in most, if not all, Member States, are to be seen as a legitimate way of doing business, but that they may present specific risks for shareholders and creditors in various ways. The Commission, following the Group's recommendation, takes the view that there is no need to revive the draft Ninth Directive on group relations[21], since the enactment of an autonomous body of

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[20] Such an alternative regime would notably be based on the requirement for a solvency test before any payment of dividend or other distribution can be made.

[21] A draft "Ninth Company Law Directive on the Conduct of Groups containing a Public Limited Company as a Subsidiary" was circulated by the Commission in December 1984 for consultation. According to its Explanatory Memorandum, the Directive was intended to provide a framework in which groups can be managed on a sound basis whilst ensuring that interests affected by group operations are adequately protected. Such a legal framework, adapted to the special circumstances of groups, was considered to be lacking in the legal system of most Member States.

Apart from its provisions dealing with the notification and disclosure of shareholdings in PLCs, which covered all PLCs, the Directive otherwise applied only when a PLC was the subsidiary of another undertaking (which could itself be a PLC, but could also be a natural person or a legal person).

The main features of the proposal were : a) a definition of a "subsidiary undertaking" which would oblige Member States to provide for "control contracts", b) rules about the disclosure of shareholdings in PLCs, c) detailed rules (Section 4) as to the conduct of a "parent undertaking" towards a PLC subsidiary (including the liability of the parent undertaking for damage to the PLC subsidiary and for its debts), d) detailed rules applicable when the parent undertaking had entered into a "control contract" with a PLC (Section 5), or when it had made a "unilateral declaration instituting a vertical group" (Section 6), which would contain similar safeguards to those prescribed in Section 4 but with important additions (including a rights for the employee representatives on the subsidiary PLC's supervisory body to veto instructions from the parent undertaking).

The consultation on the draft Directive showed that there was very little support for such a comprehensive framework on group law: such an approach was largely unfamiliar to most Member law specifically dealing with groups does not appear necessary, but that particular problems should be addressed through specific provisions in three areas.

Financial and non financial information

Complete information and disclosure with regard to the group's structure and intra-group relations are a crucial pre-requisite to ensure that the functioning of groups remains compatible with the interests of shareholders and creditors at the different levels. The actual provisions of the Seventh Company Law Directive on consolidated accounts do not sufficiently address these concerns, in that consolidated figures do not reflect the financial situation of the various parts of the group and the degree of dependence of the subsidiaries on the parent company.

The need for better financial and non financial information about groups of companies is already addressed partly by a series of EU measures, whether adopted (application of IAS to consolidated accounts), pending (information to be provided under the proposed Thirteenth Directive), or envisaged (information to be provided in the annual corporate governance statement). The Commission nevertheless observes that the scope of these measures is limited to listed companies. The Commission therefore considers that additional initiatives aiming at improving to the extent necessary the financial and non financial information disclosed by groups are desirable when the parent company is not listed. Since transparency is felt as the most important area of intervention with regard to groups, whether they are listed or not, the Commission regards these additional initiatives as priorities for the short term.

Implementation of a group policy

Member States should be required to provide for a framework rule for groups that allows those concerned with the management of a company belonging to a group to adopt and implement a co-ordinated group policy, provided that the interests of that company's creditors are effectively protected and that there is a fair balance of burdens and advantages over time for that company's shareholders. The Commission sees the introduction of such a rule as an important step towards improved business efficiency and competitiveness, but stresses that appropriate safeguards have to be carefully designed. A proposal for a framework Directive to this effect will therefore be presented in the medium term.

Pyramids

Pyramids, defined by the High Level Group as chains of holding companies with the ultimate control based on a small total investment thanks to the extensive use of minority shareholders, raise a number of problems stemming from their lack of transparency. The Commission notes that the introduction of a requirement to publish an annual corporate governance statement (as suggested in Section 3.1.1. above) would, together with the adoption of the proposed Thirteenth Directive, constitute a first significant improvement in this respect.

States, and the business sector viewed it as too cumbersome and too inflexible. As a consequence, the decision was made not to issue an official proposal.

The Group stressed that pyramidal groups that include listed companies raise particular concerns. It recommended that national authorities should be required not to admit to listing companies belonging to abusive pyramids. The Group defined them as holding companies whose sole or main assets are their shareholding in another listed company, but made an exception for cases where the economic value of such admission is clearly demonstrated, thereby recognising that the definition of what constitutes an abusive pyramid required further consideration. It also suggested that operators of stock indices should properly take into account the free float in determining the respective weight of each company.

The Commission considers it necessary to give further examination to the risk inherent in abusive pyramids. In so doing, the Commission will take account of the need to avoid undue restrictions of companies' freedom to choose their appropriate organisation. The Commission therefore intends to obtain on this issue the expert opinion of the Committee of European Securities Regulators (CESR).

3.4.Corporate restructuring and mobility

The growing integration of the single market leads companies increasingly to do **business across national borders** within the Union. In order to be able to align their structure on their activities, European companies have repeatedly called for the adoption of legal instruments capable of meeting their needs for mergers between companies from different Member States and for transfer of their seat from one Member State to another.

The Commission intends to present in the short term a new proposal for a **Tenth Company Law Directive** on cross-border-mergers[22] as well as a proposal for a **Fourteenth Company Law Directive** on the transfer of the seat from one Member State to another[23]. Both proposals are faced with the task of solving difficulties relating to board structure and employee participation. In this respect, the Commission welcomes the approval in October 2001 of the European Company Statute, which opens up promising prospects for the solution of comparable issues in the Tenth and Fourteenth Directives. In addition to these company law implications of corporate restructuring and mobility, which are covered by the present Communication, attention is paid to their social implications in other Commission initiatives (these social implications are addressed in the Multi-Annual Work Programme of the Social Partners 2003-2005).

[22] Although the laws of some Member States do not prohibit a company from one of those States from absorbing a company from another Member State or from taking part in the formation of a new company by merger with a company registered in another Member State, such an operation may be carried out only with companies from Member States where it is likewise not prohibited by law. The adoption of the European Company Statute offers one solution to these problems (a European Company may be created inter alia by merger of two or more public limited liability companies from different Member States). A proposal for a Tenth Company Law Directive is nevertheless desirable, since a) companies may wish to enter into a cross-border merger without creating a European Company, and b) other types of companies may wish to enter into a cross-border merger.

[23] In the absence of legislation governing the cross-border transfer of seat, such an operation is currently impossible or at least contingent on complicated legal arrangements. This is because Member States laws do not provide the necessary means and, when a transfer is possible by virtue of simultaneously applying national laws, there are frequent conflicts between those laws because of the different connecting criteria applied in the Member States. A legislative effort is needed in this field in order to implement the freedom of establishment in the manner intended by the Treaty.

The High Level Group made **other recommendations** relating to restructuring transactions, along the following lines : a) some of the requirements currently foreseen by the Third Company Law Directive (mergers of public limited liability companies) and by the Sixth Company Law Directive (division of such companies) should be relaxed in specific cases which make them superfluous; b) Member States should be required to create squeeze-out rights (for majority shareholders) and sell-out rights (for minority shareholders), at least in listed companies, subject to certain thresholds being reached. The introduction of such rights would complement the comparable provisions already contained in the current proposal for a Thirteenth Company Law Directive on take-over bids.

The Commission considers that the simplification of restructuring transactions pursued by the proposed relaxation of some of the requirements currently foreseen by the **Third Directive** and the **Sixth Directive** is desirable in so far as the necessary safeguards are ensured. The Commission notes that this simplification is not perceived by the Group as an immediate priority, and therefore intends to take the necessary initiatives in the medium term.

With respect to the introduction of **squeeze-out rights and sell-out rights**, proposed by the High Level Group in its Restructuring Chapter, the Commission observes that the same objectives are pursued by one of the recommendations made by the SLIM Group about the simplification of the Second Directive, which the High Level Group has endorsed. The Commission therefore intends to consider such an introduction as part of the modernisation of the Second Directive, which the Commission regards as a priority for the short term.

3.5.The European Private Company

The High Level Group noted that the Societas Europaea (SE), adopted in October 2001, may not meet all expectations of the business community, in particular SMEs, and referred to the development, from a private initiative, of a "European Private Company" (EPC) which, as a **new legal form at EU level**, would primarily serve the needs of SMEs which are active in more than one Member State. This concept has received **widespread interest and support** not only from the private sector, but also from the European Economic and Social Committee, and the introduction of such a form is regarded by many as easier to achieve than the European Company Statute.

The Group nevertheless observed that the first priority should be to adopt the **Tenth Directive** on cross-border mergers, which is expected to meet one of the purposes advocated for the EPC. Therefore, and in view of a number of issues which need to be solved (e.g. tax or co-determination issues), the Group recommended that before deciding to submit a formal proposal, the Commission should launch a **feasibility study** in order to clearly identify the practical benefits of – and problems related to – the introduction of an EPC statute.

The Group suggested that such a feasibility study should be launched in the medium term, i.e. after the adoption of the Tenth Directive. The Commission considers that the identification of most of the practical benefits of – and problems related to – the introduction of an EPC statute can be achieved independently from the progress hoped on the Tenth Directive. The Commission will therefore launch a feasibility study **in the short term**, with a view to presenting a proposal for an EPC statute (if the feasibility study confirms the need for such an initiative) in the medium term.

The aim of this feasibility study is to evaluate the advantages and the problems generated by a possible European legal statute for small and medium enterprises in order to facilitate their internationalisation. To this end, the study should conduct an in-depth analysis of the legal, tax and social policy regimes relevant to SMEs in the 25 Member States of the enlarged Union.

3.6. The European Co-operative Society and other EU legal forms of enterprises

The European Council adopted last year a general orientation on the proposal for a Regulation on the **Societas Cooperativa Europaea** (SCE) and proposals of statutes for a **European Association** and a **European Mutual Society** are now examined by the European Parliament and the Council. The Commission observes that a majority of the responses received in the consultation organised by the High Level Group expressed positive views on the usefulness of these statutes.

The Commission intends to **actively support the ongoing legislative process engaged** on these statutes, in response to the explicit desire expressed by the European Parliament for giving significant attention to the development of new European legal forms of enterprises. Adoption by the Council of the Regulation on a European Co-operative Society is hoped for in the near future, while the discussion within the Council of the proposal for a European Association is actively going on. As soon as agreement on this proposal will have been reached, the necessary attention will be devoted to the proposal for a European Mutual Society.

With respect to the possible development of a proposal for a Regulation on a **European Foundation**, before deciding to submit a proposal, the Commission intends to launch a study aiming at assessing in depth the feasibility of such a statute. Such an assessment will have to take account of the lessons to be drawn from the adoption and use of the other European statutes, so that it should best take place in the medium term.

3.7. Enhancing the transparency of national legal forms of enterprises

Increased disclosure requirements for all legal entities with limited liability, are a need which stems from the necessity a) to preserve fair competition[24] and b) to prevent company law from being abused for fraud, terrorism or other criminal activity[25]. The Commission is committed to respond to this need, but the scope and nature of this recommendation need to be further examined. In view of the numerous other priorities, the necessary actions will be taken in the medium term.

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[24] The First Company Law Directive, which contains essential disclosure requirements (companies must file a series of documents and particulars with a register, and interested parties can obtain a copy thereof), applies only to limited liability companies, and not to a series of alternative forms of enterprise. The creation of a framework for disclosure of basic data on certain other legal entities engaged in economic activities is therefore perceived as a useful tool for trade and competition within the Internal Market.

[25] See in this respect the study "Transparency and Money Laundering: A study of the regulation and its implementation, in the EU Member States, that obstruct anti-money laundering international co-operation (banking/financial and corporate/company regulative fields)", submitted to the Commission in October 2001 by the Transcrime Institute (University of Trento, Italy). This study, commissioned pursuant to conclusion n°58 of the Tampere Special European Council of 1999 and the joint ECOFIN/JAI Council of October 2000, presents recommendations to increase the transparency of limited liability companies as well as other vehicles (as trusts).

4. CONCLUSION

The present Communication explains why the European regulatory framework for company law and corporate governance needs to be modernised. It defines the key policy objectives which should inspire any future action to be taken at EU level in these areas. It includes an action plan, prioritised, to plan the various actions which appear necessary over the short, medium and long term. It determines which type of regulatory instrument should be used, and approximately by when.

Further to the conclusions adopted by the Brussels European Council of 20 and 21 March 2003, which requested the adoption of an Action Plan on Company Law and Corporate Governance, the Commission addresses this Communication to the European Parliament and the Council, and transmits it also to the European Economic and Social Committee and the Committee of the Regions.

Comments from all interested parties are invited by 31 August 2003. Comments should be sent to DG MARKT G3, European Commission, B-1049 Brussels (e-mail address: Markt-COMPLAW@cec.eu.int).

The Commission will publish a synthesis of the comments received, and they will be given adequate consideration when implementing the present Action Plan.

ANNEX 1

Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward		
List of Actions		
SHORT TERM (2003-2005)		
	Description of action	**Preferred type of initiative**[26]
Corporate Governance	Enhanced corporate governance disclosure requirements (including confirmation of collective responsibility of board members for key non financial statements)	Legislative (Directive amending existing legislation)
	Integrated legal framework to facilitate efficient shareholder communication and decision-making (participation to meetings, exercise of voting rights, cross-border voting)	Legislative (Directive)
	Strengthening the role of independent non-executive and supervisory directors	Non legislative (Recommendation)
	Fostering an appropriate regime for directors remuneration	Non legislative (Recommendation)
	Confirming at EU level the collective responsibility of board members for financial statements	Legislative (Directive amending existing legislation)
	Convening a European Corporate Governance Forum to co-ordinate corporate governance efforts of Member States	Non legislative (Commission initiative)
Capital Maintenance	Simplification of the Second Directive, on the basis of the SLIM recommendations as supplemented in the HLG Report (SLIM-Plus)	Legislative (Directive amending existing legislation)

[26] This column gives information about the type of regulatory instrument which should be used:
- When « Directive » is mentioned, this means that the action envisaged requires either the adoption of a new Directive or the modification of one or several existing Directives (in the areas of company law, securities law, financial reporting law…), in accordance with the regulatory powers of the various relevant bodies existing at EU level;
- To the extent possible, the necessary initiatives will be grouped with a view to avoiding a multiplication of legislative initiatives.

Groups of companies	Increased disclosure of group structure and relations, both financial and non financial	Legislative (Directive amending existing legislation)
Restructuring	Proposal for a Tenth Directive on cross-border mergers	Legislative (Directive)
	Proposal for a Fourteenth Directive on cross-border transfer of the seat	Legislative (Directive)
European Private Company	Feasibility study in order to assess the practical needs for – and problems of – a European Private Company	Non legislative (Study)
EU legal forms	Active progress on current proposals (European Association, European Mutual Society)	Legislative (existing proposals)
	<u>MEDIUM TERM (2006-2008)</u>	
	<u>Description of action</u>	**<u>Preferred type of initiative</u>**
Corporate Governance	Enhanced disclosure by institutional investors of their investment and voting policies	Legislative (Directive)
	Choice for all listed companies between the two types (monistic/dualistic) of board structures Enhancing the responsibilities of board members (special investigation right, wrongful trading rule, director's disqualification)	Legislative (Directive) Legislative (Directive or Directive amending existing legislation)
	Examination of the consequences of an approach aiming at achieving a full shareholder democracy (one share / one vote), at least for listed companies	Non legislative (Study)
Capital Maintenance	Review of the feasibility of an alternative to the capital maintenance regime	Non legislative (Study)
Groups of companies	Framework rule for groups, allowing the adoption at subsidiary level of a co-ordinated group policy	Legislative (Directive)
Pyramids	Prohibition of stock exchange listing for abusive pyramids, if appropriate, following further examination and expert input	Legislative (possible Directive amending existing legislation)

Restructuring	Simplification of the Third Directive (legal mergers) and Sixth Directive (legal divisions)	Legislative (Directive amending existing legislation)
European Private Company	Possible proposal for a Statute for a European Private Company (depending on the outcome of the feasibility study)	Legislative
EU legal forms	Assess the need for the creation of other EU legal forms (e.g. European Foundation)	Non legislative (Study)
Transparency of national legal forms	Introduce basic disclosure rules for all legal entities with limited liability, subject to further examination	Legislative (Directive or Directive amending existing legislation)
	LONG TERM (2009 onwards)	
	Description of action	**Preferred type of initiative**
Capital Maintenance	Possible introduction in the Second Company Law Directive of an alternative regime (depending on the outcome of the feasibility study)	Legislative (Directive amending existing legislation)

ANNEX 2
LIST OF EXISTING AND PROPOSED EUROPEAN COMPANY LAW INSTRUMENTS

Existing European Company Law Instruments	
REGULATIONS	
Title of Act	**Publication Reference**
Council Regulation (EEC) 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)	[1985] OJ L 199/1
Council Regulation (2001/2157/EC) of 8 October 2001 on the Statute for a European Company SE *supplemented by* Council Directive (2001/86/EC) of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees	[2001] OJ L 294/1 [2001] OJ L 294/22
Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards	[2002] OJ L 243/1
DIRECTIVES	
Title of Act	**Publication Reference**
First Council Directive (EEC) 68/151 of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community	[1968] OJ L 65/8
Second Council Directive (EEC) 77/91 of 13 December 1976 on co-ordination of safeguards, which for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent throughout the Community	[1977] OJ L 26/1
Third Council Directive (EEC) 78/855 of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies	[1977] OJ L 295/36

Fourth Council Directive (EEC) 78/660 of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies	[1978] OJ L 222/11
Sixth Council Directive (EEC) 82/891 of 17 December 1982 based on Article 54(3)(g) of the Treaty concerning the division of public limited liability companies	[1982] OJ L 378/47
Seventh Council Directive (EEC) 83/349 of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts	[1983] OJ L 193/1
Eighth Council Directive (EEC) 84/253 of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents	[1984] OJ L 126/20
Eleventh Council Directive (EEC) 89/666 of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State	[1989] OJ L 395/96
Twelfth Council Directive (EEC) 89/667 of 21 December 1989 on single-member private limited liability companies	[1989] OJ L 395/40
RECOMMENDATIONS	
Title of Act	**Publication Reference**
Commission Recommendation (2001/256/EC) of 15 November 2000 on quality assurance for the statutory audit in the European Union: minimum requirements	[2001] OJ L 91/91
Commission Recommendation (2001/453/EC) of 30 May 2001 on the recognition, measurement and disclosure of environmental issues in the annual accounts and annual reports of companies	[2001] OJ L 156/33
Commission Recommendation (2002/590/EC) of 16 May 2002 on "Statutory Auditors' Independence in the EU : A Set of Fundamental Principles"	[2002] OJ L 191/22

Proposed European Company Law Instruments	
REGULATIONS	
Title of Act	**Publication Reference**
Amended Proposal for a Council Regulation (EEC) on a statute for a European Association	[1993] OJ C 236/1
Amended Proposal for a Council Regulation (EEC) on a statute for a European Co-operative Society	[1993] OJ C 236/17
Amended Proposal for a Council Regulation (EEC) on a statute for a European Mutual Society	[1993] OJ C 236/40
DIRECTIVES	
Title of Act	**Publication Reference**
Proposal for a Directive of the European Parliament and of the Council amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies : COM (2002) 279	[2002] OJ C 227/377
Proposal for a Directive of the European Parliament and of the Council on take-over bids : COM (2002) 534 final	[2003] OJ C 45 E/1