

EISG – Schedule of Activities - EU dossiers September 2012

Company Law

The Commission intends to **adopt an action plan in October that will specify forthcoming short, medium and long term initiatives** in the area of company law

The Commission (DG MARKT) launched an on-line stakeholder consultation on the future of European Company Law on 20 February 2012 (closed on 14 May 2012). The consultation constitutes the third step after the report of the Reflection Group and the Conference “European Company Law: The way forward” in May 2011.

In July the European Commission released the feedback statement, with a summary of responses to the public consultation on The Future of European Company Law. The consultation attracted a broad representation of society with 26 EU Member States and a number of countries outside the EU. The feedback statement gives a qualitative presentation of the contributions received but does not include any indication of potential initiatives which the EC will undertake. Some key factors were:

- Strong support for harmonisation, improving existing harmonised legal framework and finding new areas of harmonisation
- Solid backing for changing the focus from public/private to listed/unlisted
- Large percentage in favour of actions to support SME's
- Majority in favour of introducing new rules on cross-border divisions, specifically lawyers and accountants

The EC is preparing the action plan to set out its main initiatives it will take over the coming years concerning Company Law and Corporate Governance. This is scheduled for adoption by the end of 2012.

The EP has a discussion on company law in Strasburg on 13 June 2012.

Klaus-Heiner Lehne stressed the following:

- The need to fix gaps in company law
- Remove the burden on companies
- Focus on cross-border issues

Michael Barnier stressed the following main points:

- Company law and current work on corporate governance cannot be divided
- Working on increasing transparency for companies and investors
- Also focus on non-financial transparency
- Diversity of governing boards
- Constructive role of shareholders, increasing their responsibility through the remuneration packages
- Increase business competitiveness in Europe
- Developing European private companies

BIS is active on this in the high-level Company Law Expert Group (CLEG) meetings with the Commission.

Gender Quotas

Commission launched a public consultation in the beginning of March on Gender imbalance in corporate boards in the EU. The Commission is seeking views on possible action at EU level, including legislative measures/quotas, to redress the gender imbalance on company boards. The public consultation will run until 28 May 2012.

DG Justice is also conducting an Impact assessment on feasibility, economic and social impact and the costs and benefits of possible EU measures on gender quotas in company boardrooms (results not before summer 2012).

The Commission's (DG MARKT) forthcoming Company Law Action Plan may also contain provision(s) on board diversity. This might involve a disclosure requirement similar to that being added to the UK Corporate Governance Code.

Corporate Governance

Corporate Governance Green Paper and forthcoming legislative proposal

The Commission is currently in the last phase of the reflection process on corporate governance (undergoing inter-service consultation) and will be presented in the action plan in October. The paper will identify areas/key issues where "soft law" is needed and areas that should be left in the hands of national regulators (or the EU).

Ugo Bassi stated at an event in the European Parliament in June 2012 that he believed in a "principles-based answer".

Transparency is a key issue and the Commission has stated that a lot can be achieved by transparency "instead of hard rules". "Comply or explain should still be the guiding principle" according to Ugo Bassi.

The Commission is not intending to propose a diversity quota in the area of Corporate Governance or Company law. Instead, they will go into the area of transparency to achieve the objectives without introducing quotas.

The four main parts of the package will most likely be engagement by shareholders, remuneration, transparency of institutional practices and proxy voting. Proposals for corporate governance will be rolled into the company Law Action Plan

European Parliament: The EP's JURI committee adopted Bodu's report on Corporate Governance on 5 March 2012. However, it was controversial and amendments/declaration from S&D and Greens were tabled when the report was put to a plenary vote of the EP on 29 March. As a result of that vote the report was amended to include a call for mandatory gender diversity quotas for boards.

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Link to the public consultation: Gender imbalance in corporate boards in the EU
http://ec.europa.eu/justice/newsroom/gender-equality/opinion/120528_en.htmDG

DG Justice is also conducting an Impact assessment on feasibility, economic and social impact and the costs and benefits of possible EU measures on gender quotas in company boardrooms (results not before summer 2012).

The Commission's forthcoming CSR legislative proposal may also contain provision(s) on board diversity.

The European Parliament adopted on 13 March 2012 a resolution drafted by Liberal Dutch MEP Sophia in't Veld. The EP reiterated its call for new laws introducing quotas to boost female representation on corporate boards, should national measures fail to achieve any satisfying result.

ESMA Launches Consultation on Proxy Advisors

ESMA has published a consultation that focuses on the development of the proxy advisory industry in Europe. The paper identifies several key issues related to the proxy advisory market and outlines a range of policy options ESMA will consider including: no EU-level action at this stage; encouraging Member States and/or industry to develop standards; quasi-binding EU-level regulatory instruments; and binding EU-level legislative instruments. The deadline for comment was 25 June.

ESMA expects to publish a feedback statement in Q4 of 2012 which will summarise the responses received and will state ESMA's view on whether there is a need for policy action in this area.

Corporate Reporting/Accounting

Disclosure of non-financial information by EU companies

An expert group on disclosure of non-financial information by EU companies has been established and is chaired by DG MARKT. The Expert Group has been established in the context of the impact assessment currently being done by the Commission on disclosure of nonfinancial information by companies, with the specific mandate to provide expert advice to the Commission. The Commission is currently doing a study on CSR reporting.

A legislative proposal (most likely in the form of a directive) will be proposed at the end of 2012 (November/December). It will be more narrow in scope than previously envisaged by the Commission and focus on a common standard for disclosure of environmental and social information.

Communication on Corporate Social Responsibility

The Commission (DG Enterprise and DG Employment led) adopted a Communication on CSR on 25 October 2011. It was originally intended to be published in June/July this year but it was delayed and was proposed simultaneously with the DG MARKT's proposal on Social Enterprises and the Country by Country reporting dossier.

In the Communication, the Commission puts forward a new definition of CSR as "the responsibility of enterprises for their impacts on society". The Commission intends to:

1. Create multi-stakeholder CSR platforms in 2013 in a number of relevant industrial sectors for enterprises, their workers and other stakeholders to make public commitments on CSR issues relevant to each sector and to jointly monitor progress.
2. Launch (from 2012 onwards) a European award scheme for CSR partnerships between enterprises and other stakeholders.
3. The Commission also intends to launch a process in 2012 with enterprises (and other stakeholders) in order to develop a code of good practice for self- and co-regulation exercises, which should improve the effectiveness of the CSR process.

In addition, all large European enterprises should make a commitment by 2014 to take account of at least one of the following sets of principles and guidelines when developing their approach to CSR: the UN Global Compact, the OECD Guidelines for Multinational Enterprises, or the ISO 26000 Guidance Standard on Social Responsibility.

The Commission is currently in the process of developing a "code of codes" as outlined in the communication.

European Parliament

Richard Howitt (S&D-UK) is the rapporteur on the CSR Communication (he was the rapporteur on the previous CSR Communications). He intends to start drafting his proposal in September 2012, but he has said that he will closely coordinate with the (forthcoming) EP rapporteur on the (see above) proposal on disclosure of non-financial information in order to ensure that the EP presents a coherent line.

Revision of the 4th and 7th Company Law Directives ("Accounting Directives")

The Commission adopted the legislative proposal on 25 October 2011. These Directives create together the core of the accounting acquis in bringing together a harmonized set of requirements for external reporting and a common set of requirements for consolidated financial statements of all limited liability companies in the EU. By proposing to amend the Accounting Directives (78/660/EEC and 83/349/EEC), the Commission aims to reduce the administrative burden for small companies. Simplifying the preparation of financial statements would also make these more comparable, clearer and easier to understand. It would also allow users of financial statements such as shareholders, banks and suppliers to gain a better understanding of a company's performance and financial position. Potential cost savings for SMEs are estimated at € 1.7 billion per year.

The micro-entities exemption Directive will need to be integrated into the 4th and 7th Company law Directives.

Council

The Danish presidency was unable to conclude the dossier during its presidency and it is now up to the Cypriot presidency to take over the dossier.

European Parliament

Legal Affairs (JURI) Committee lead. Klaus-Heiner Lehne (EPP-Germany) is the rapporteur.

ECON discussed draft opinion on 20 March 2012 by Wolf Klinz (ALDE). JURI Committee vote scheduled for 10 July 2012. EP Plenary vote scheduled for 10 September 2012.

Transparency Directive (Modernisation of the Directive 2004/109/EC)

On 25 October 2011, the European Commission adopted a modernisation of the Transparency Directive (Proposal for amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC). Under the proposed revision of the Transparency Directive, listed companies, including small and medium-sized issuers, would no longer be obliged to publish quarterly financial information. This would contribute to further cost savings and should help to discourage short-termism on financial markets. Other proposals include giving more powers to ESMA (for instance, the powers to issue guidelines to specify the information which should be included in the management report) and enhancing the sanctioning powers of the competent authorities.

European Parliament

JURI Committee lead, rapporteur Arlene McCarthy (UK-S&D). ECON discussed a draft opinion on 20 March 2012. The vote was scheduled in JURI Committee for 10 July 2012 but has been postponed to September (EP Plenary was scheduled for 10 September 2012)

Audit

Amendment of the Statutory Audit Directive (amend. Directive 2006/43/EC) and a Regulation on Statutory Audit of Public Interest Entities

The Commission adopted the proposals on 30 November 2011; however, the provision on mandatory joint audit was dropped due to opposition to the proposals in the college of Commissioners' meetings.

Some of the key issues in the Regulation and Directive:

- Mandatory rotation of audit firms after a maximum engagement period of six years, with limited exceptions;
- Mandatory tendering for auditing contracts;
- Stricter rules for oversight and appointment of auditors by auditing committees;
- A prohibition on audit firms providing non-audit services to their audit clients;

- A requirement that larger audit firms split off their non-audit services;
- Compliance with the International Standards on Auditing by all statutory auditors and audit firms.
- The Commission is also proposing to create a single market for statutory audit services allowing auditors to exercise their profession freely and easily across Europe, once licensed in one member state, by amending the 2006 auditing directive.

European Parliament: Sajjad Karim (ECR-UK) has replaced Syed Kamall (ECR-UK) as the rapporteur for the Legal Affairs (JURI) committee.

Indicative timetable European Parliament

Audit legal affairs committee – JURI (rapporteur Sajjad Karim)

Deadline for draft opinion: 31-Aug-12
 Presentation of draft opinion: 17-Sep-12
 Deadline amendments: 09-Oct-12
 Presentation amendments: 06-Nov-12
 Vote in JURI: 18-Dec-12

Audit – ECON committee – (rapporteur Kay Swinburne)

Deadline for draft opinion 25-Sep-12
 Presentation of draft opinion 15-Oct-12
 Deadline amendments 25-Oct-12
 Presentation amendments 19-Nov-12
 Vote in ECON 03-Dec-12

Shadow Rapporteurs

EPP – Sebastian Bodu (Romania)

S&D - Antonio Masip Hildago (Spain)

ALDE – Alexandra Thein (Germany)

Greens/EFA –Eva Lichtenberger (Austria)

GUE/NGL – Jiri Mastalka (Czech Republic)

EFD – Francesco Speroni (Italy)

The EP's JURI committee had its first exchange of views on 1 March 2012.

Sajjad Karim presented his discussion paper/working document on audit to the JURI committee on 10 July and the committee had an exchange of views. Sajjad stated that "all policy options remains on the table", however, he came out strongly against pure audit firms but presented both pros and cons with regards to rotation and tendering. He was very clear that he would not be concerned with market measures, since that was an issue for national competition authorities. He stressed the

importance of auditor reporting and audit committees. He also wants national authorities to have the freedom to decide if they want to delegate responsibilities for (non-PIE) audit inspection to professional bodies.

He also said that he hoped the dossier would be finalised during the Cypriot presidency. He will have at least another meeting with Barnier to work through the issues.

The EP's own impact assessment unit has made an appraisal of the Commission's IA and the result was very damning, prompting Masip Hidalgo to state that "[the EP's IA appraisal] is UK's wet dream becoming reality" and that it will be used as a weapon against the Commission. Lichtenberger also thought that the IA by the EP was very political.

Some key points in EPs appraisal:

- the causal link between an alleged general problem of deficiencies in audit quality in the EU and the worldwide financial crisis is not clearly demonstrated
- have expected the Commission, as the EU competition authority, to have provided a more thorough analysis of the market for audit services and to have made a more closely substantiated case for a possible distortion of the competition.
- , in the case of the proposed mandatory rotation for auditors and the proposed separation between audit and non-audit services to PIEs, the IA presents as preferred options those whose positive impacts are contested by a majority of stakeholders
- the Commission does not seem to provide sufficient evidence that the preferred options are necessarily the most beneficial for the concerned market. Less radical alternative options have not been explored in the same detail. Moreover, the Commission does not seem to pay enough attention to unintended effects of its options.

In the EP debate, the Commission, represented by Ugo Bassi (Director, DG MARKT) stated that the Commission "was now very open to dialogue". The Commission has also changed its head of the audit unit to Ms Nathalie Berger, who officially started on 16 July.