

## EU Commission Proposes 2013 Action Plan for Company Law and Corporate Governance

On December 12, 2012, the European Commission published an [Action Plan](#) with initiatives it intends to undertake in 2013 in the fields of EU company law and corporate governance. These initiatives are primarily inspired by the responses to the Commission's 2011 [Green Paper](#) on the EU corporate governance framework and an on-line [consultation](#) on the future of European company law. They are aimed at enhancing transparency, engaging shareholders and simplifying cross-border operations of EU companies. The Commission further plans to codify a number of major EU company law directives.

***Enhancing Transparency.*** The Commission plans to undertake the following measures aimed at increasing transparency in EU companies:

- A proposal (possibly through an amendment to the Accounts Directive<sup>1</sup>) to strengthen disclosure requirements with respect to companies' board diversity policies and risk management strategies;
- A recommendation to improve the quality of companies' corporate governance reports, in particular the quality of explanations provided under the "comply or explain" principle;
- An initiative to improve the visibility of shareholdings in Europe (as part of the Commission's legislative work program in the field of securities law); and
- An initiative (possibly through an amendment to the Shareholders' Rights Directive<sup>2</sup>) on disclosure of voting and engagement policies and voting records by institutional investors.

***Engaging Shareholders.*** The Commission intends to focus on the following initiatives to improve shareholder engagement in EU companies:

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<sup>1</sup> Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, p.11).

<sup>2</sup> Directive 2007/36/EC of July 11, 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, p. 7).

- An initiative (possibly through an amendment to the Shareholders' Rights Directive) to improve transparency on director remuneration policies and individual remuneration of directors, and to grant shareholders the right to vote on companies' remuneration policies and disclosure;
- An initiative (possibly through an amendment to the Shareholders' Rights Directive) aimed at improving shareholders' control over related-party transactions;
- An initiative (possibly through an amendment of the Shareholders' Rights Directive) to improve the transparency and conflict-of-interest frameworks applicable to proxy investors, based on the responses to ESMA's 2012 [discussion paper](#) on proxy advisors;
- Working closely with ESMA and competent national authorities to develop guidance regarding the relationship between investor cooperation for corporate governance purposes and the rules on "acting in concert" under the Takeover Bids Directive<sup>3</sup> and the Transparency Directive<sup>4</sup>; and
- Encouraging the development of transnational employee share ownership schemes in Europe.

***Cross-Border Operations.*** The Commission plans to take the following actions to encourage and facilitate cross-border operations of EU companies and to improve EU company law in general:

- Conduct consultations to assess the need for an initiative on the cross-border transfer of companies' registered offices (since there are currently no EU rules enabling companies to transfer their registered seat within the EU while preserving their legal personality);
- Report on a current study on the application of the Cross-Border Mergers Directive<sup>5</sup> and assess the need to revise the rules on cross-border mergers, given the complexity of and the uncertainty surrounding a number of (mainly procedural) issues (*e.g.*, a lack of harmonization of valuation methods for assets, the duration of the protection period for creditors' rights and the consequences for creditors' rights on completion of the merger);

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<sup>3</sup> Directive 2004/25/EC of 21 April 2004 on takeover bids (OJ L 142, p. 12).

<sup>4</sup> Directive 2001/34/EC of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 390, p. 38).

<sup>5</sup> Directive 2005/56/EC of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, p. 1).

- Consider an initiative to provide a framework for cross-border divisions (possibly through an amendment of the Cross-Border Mergers Directive);
- Continue to explore ways to improve the administrative and regulatory framework applicable to SMEs to enhance their cross-border operations and to follow-up on the proposal to create a European private limited company<sup>6</sup>;
- Launch an information campaign to encourage the use of the European Company<sup>7</sup> and European Cooperative<sup>8</sup> statutes; and
- Improve the information available on groups of companies and on the recognition of the “group interest” concept.

**Codification.** The Commission plans to merge and restate a number of major EU company law directives, including directives covering mergers<sup>9</sup> and divisions,<sup>10</sup> the formation of public limited companies and the alteration and maintenance of their capital,<sup>11</sup> single-member private limited companies,<sup>12</sup> foreign branches<sup>13</sup> and certain rules on disclosure,

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<sup>6</sup> Proposal for a Council Regulation of 25 June 2008 on the Statute for a European Private Company (COM (2008) 396). This proposal intends to establish the European private limited liability company (*societas private europaea* (SPE)), a simplified legal form to encourage the setting up and running of SMEs in the single EU market.

<sup>7</sup> Regulation 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ L 294, p. 1) and Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, p. 22).

<sup>8</sup> Regulation 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (OJ L 207, p. 1) and Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees (OJ L 207, p. 25).

<sup>9</sup> Directive 2011/35/EU of 5 April 2011 concerning mergers of public limited liability companies (OJ L 110, p. 1); see footnote 5.

<sup>10</sup> Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies (OJ L 378, p. 47).

<sup>11</sup> Directive 77/91/EEC of 13 December 1976 on coordination 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 (OJ L 26, p. 1).

<sup>12</sup> Directive 2009/102/EC of 16 September 2009 in the area of company law on single-member private limited liability companies (OJ L 258, p. 20).

<sup>13</sup> Directive 89/666/EEC 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 (OJ L 395, p. 36).

validity and nullity.<sup>14</sup> The merged directive will also include the changes introduced by the recent directive on the interconnection of business registers.<sup>15</sup>

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If you have any questions, please feel free to contact any of your regular contacts at the firm or any of our partners and counsel listed on our website at <http://www.clearygottlieb.com>.

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<sup>14</sup> Directive 2009/101/EC of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, p. 11).

<sup>15</sup> Directive 2012/17/EU of 13 June 2012 amending Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC as regards the interconnection of central, commercial and companies registers (OJ L 156, p. 1).

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