Corporate governance in financial institutions

P7_TA(2011)0223

European Parliament resolution of 11 May 2011 on corporate governance in financial institutions (2010/2303(INI))

(2012/C 377 E/02)

The European Parliament,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies ([1]),

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Legal Affairs and of the Committee on the Internal Market and Consumer Protection (A7-0074/2011),

Approach

1. Welcomes the Commission's Green Paper and the opportunity to improve corporate governance structures throughout the EU;

2. Emphasises that the proper functioning of the internal market depends on the stability of the financial system and, related to this, on the trust put by European citizens and consumers in financial institutions and transactions; notes that the remuneration systems used to date have led to inappropriate structures;

3. Is aware that in the wake of the financial crisis it has become clear that the quality of consumer protection and safeguards in the financial services sector requires tangible and strong improvement, particularly as regards the monitoring and supervisory aspects;

4. Believes that the financial sector should meet the needs of the real economy, help to promote sustainable growth and display the greatest possible degree of social responsibility;

5. Notes that during the recent financial crisis many financial institutions around the world failed at great cost to the taxpayer; believes that the Commission is right to examine every possible cause of failure in financial institutions in order to prevent another crisis occurring;

6. Notes a lack of values and ethics in the behaviour of some actors in financial markets and institutions; underlines that financial markets and institutions have to take into account, as part of their corporate social responsibility, the interests of all parties involved, including clients, shareholders and employees;

7. Notes that the US Sarbanes-Oxley Act was ineffective in protecting US institutions during the financial crisis, whilst at the same time increasing compliance costs for all listed companies, in particular SMEs, reducing competitiveness and hampering the creation of new listed companies; emphasises that present economic circumstances and the need for growth make it imperative to avoid an EU 'Sarbanes-Oxley' effect;

([1]) OJ L 329, 14.12.2010, p. 3.

8. Notes the diversity of corporate governance structures throughout the European Union and the diversity of approaches that Member States take in regulating these structures; recognises that a 'one size fits all' approach would be inappropriate and damaging to the competitiveness of financial institutions; observes that national supervisors have an understanding of these diverse approaches and are in many instances best placed to take decisions following EU principles; stresses nonetheless that strong minimum standards are required to ensure good governance across the financial sector in the EU;

9. Recognises that the area of corporate governance is constantly evolving; believes that a proportionate approach combining both targeted principle-based regulations and flexible 'comply or explain' codes of best practice on an equal footing is appropriate; stresses that it must be complemented by regular external evaluation and appropriate regulatory oversight;

10. Believes that in other areas a procedure of enhanced 'comply or explain' with scrutiny may nevertheless be more appropriate with specific legislative requirements and more intrusive checks into compliance or variation, and that both qualitative and quantitative assessment is required so that compliance does not degenerate into a box-ticking exercise;

11. Requests that the Commission subject every proposal it considers to improve corporate governance to a cost-benefit impact assessment which focuses on the need to keep financial institutions strong, stable and competitive so that they can help deliver economic growth, whilst also taking into account the impact of not regulating on financial stability and the real economy;

Risk

12. Notes the failure of some financial institutions and supervisors to appreciate that the nature, scale and complexity of the risk they had incurred contributed to the financial crisis; believes that effective risk governance is ***a*** major essential element in preventing future crises;

13. Calls for the establishment in all financial institutions of an effective governance system, with adequate risk management, compliance, internal audit functions (and, in the case of insurers, actuarial functions), strategies, policies, processes and procedures;

14. Stresses that risk is intrinsic and necessary in the financial sector in the interests of providing liquidity, fostering competitiveness and helping deliver economic growth and jobs; a thorough understanding and appreciation of risk on the part of boards is absolutely vital in order to avoid a future financial crisis;

15. Calls for the establishment of mandatory risk committees or equivalent arrangements at board level for all economically significant financial institutions and at parent company board level for all economically significant financial groups; EU supervisors in consultation with the relevant national authorities should establish 'fit and proper persons' criteria and processes for senior officers and all material risk takers to be implemented by the financial institution, and national authorities should ensure compliance with these criteria;

16. Believes that the risk committee or other equivalent body should have responsibility for oversight and for advising the board on the current risk exposures of the financial institution concerned and should advise on future risk strategy, including strategy for capital and liquidity management, taking into account financial stability assessments developed by supervisors and national banks;

17. Stresses that ultimate responsibility for risk governance lies with the board, which must also take responsibility for demonstrating compliance and the formulation of recovery plans;

18. Emphasises that in any institution the running of disproportionate risks is incompatible with the most important responsibility of the members of its board, namely a long-term and sustainable business strategy;

19. Believes that firms should establish an internal procedure, reviewed by the supervisor, to address conflicts which may arise between their risk management and operational units; in addition, there should be an obligation for the board of directors to inform the supervisory authorities of any material risks they are aware of;

20. Is in favour of establishing paths to channel information on internal conflicts or inappropriate practices in a company to the risk committee or external supervisors, recognising also that practices sometimes differ from policies and management is not always aware of real practices;

21. Points out that the communication system between the risk management function and the board of directors should be improved by setting up a procedure for referring conflicts/problems to the hierarchy for resolution;

22. Underlines that the CRO should have direct access to the board of the company; in order to ensure his independence and objectivity is not compromised, his appointment and dismissal will be decided by the whole board;

23. Suggests also that procedures should be established for recording when the risk committee is overruled and the records provided to auditors and supervisors;

24. Notes the Transparency Directive, which requires institutions to disclose principal risks in their business review, and the Fourth Company Law Directive, which requires institutions to describe their internal control systems relating to financial reporting risks; observes that financial institutions should be required to disclose recovery planning and supervisory reports thereon;

25. Takes the view that it should be mandatory for financial institutions to draft an annual report – involving as little bureaucracy as possible – on the adequacy and effectiveness of their internal control systems and for their board of directors to adopt that report; takes the view, further, that it should likewise be mandatory for the annual report drawn up by a financial institution's external auditors to contain a similar assessment; stresses, however, that a 'Sarbanes-Oxley effect' must be avoided in the EU;

26. Takes the view that closer attention should be paid to the implementation of measures to raise risk awareness in financial institutions, as increased awareness of risk at all levels of the institution – and amongst its employees – is a decisive factor in improving risk management;

27. Agrees that it is necessary to strengthen measures at EU level to prevent conflicts of interest in order to safeguard the objectivity and independence of judgement of board members across the banking, securities and insurance sectors;

Boards of directors

28. Calls on EU supervisors in consultation with the relevant national authorities to develop competence criteria for a 'fit and proper person' test, by which to assess the suitability of individuals for controlled functions, taking into account the nature, complexity and size of the financial institution; supervisors must perform their assessments and approvals procedure in a timely and efficient manner with due regard for the judgement of regulated firms; for major and systemically relevant financial institutions, supervisors should perform intrusive checks as to the fitness, expertise and diversity of directors both individually and collectively and their suitability in relation to the appointment, and for directors the wider composition of the governing body and their time commitment, taking into account their other activities;

29. Calls on the Commission to develop legislation requiring large financial institutions to submit their boards to regular external evaluation aimed at ensuring not only high standards of contributions by individual directors, but also that the board as a whole and its committees are in a position to deliver on the institution's strategic objectives and management of the risk; requires large financial institutions to confirm in their annual reports that they have undertaken such an evaluation, the name of the external evaluator, a description of the scope of the evaluation and that they have acted on the latter's recommendations; calls on the ESAs to develop guidance on the scope of such evaluations in consultation with the industry, shareholders and regulators;

30. Believes the role of the CEO and Chairman should be separated, but notes that there are circumstances when a combined role could be necessary in the short term; emphasises also that corporate management and remuneration policies must comply with and foster the principles of wage parity and equal treatment of women and men established by the Treaties and by EU directives;

31. Believes that on a collective basis members of unitary or supervisory boards should possess recent and relevant professional qualifications, knowledge and experience, including financial, for jointly piloting the financial undertaking; requires all economically significant financial institutions to have non-executive board members; believes, however, that every financial institution should have a board with a diversity of experience, expertise and character so as to provide sound and prudent management and that appointments should be made on merit;

32. Emphasises that greater diversity among the members of boards of directors will reduce the financial sector's vulnerability to crises and contribute to economic stability; calls on the Commission to submit a plan to bring about phased increases in gender diversity with the aim of achieving at least 30 % representation for each gender on the boards of directors of financial institutions, to ensure that this target is met within a foreseeable period and to consider measures to strengthen diversity in terms of professional, social and cultural background;

33. Emphasises that greater diversity among the members of boards is likely to improve the quality of debate and decision-making;

34. Emphasises the importance of employee representatives being on the board of directors, in particular in view of their long-term interest in the sustainable management of the institution and because of their experience and knowledge of its internal structures;

35. Considers that publicly owned financial institutions and financial authorities must ensure open and independent appointment processes;

36. Stresses that directors must devote sufficient time to the performance of their duties, the guidelines for which should be developed by EU supervisory bodies and be monitored by the board and national supervisory bodies;

37. Believes that there should be a presumption against any person serving on an excessive number of boards of directors of different financial groups;

38. Calls for efficient implementation of the rules on consultation and employee participation systems opted for in the context of Directive 2001/86/EC supplementing the Statute for a European Company;

39. Is of the opinion that both senior management and the board of directors should be actually accountable and liable for the setting up and application of corporate governance principles at all levels of the company/corporation;

40. Regards a clearly defined European minimum standard for the accountability of the members of the boards of directors of financial institutions as necessary;

41. Notes that the European Central Bank, the European Investment Bank, the European Investment Fund and the central banks of all Member States are led by male governors; notes that only very few women are currently represented in governing positions within the central banks of the Member States and of the financial institutions;

42. Believes that directors should have a general duty of care and be obliged to report material risks to supervisors;

43. Invites the Commission and Member States to take gender-balanced measures as regards the appointment of governors within the financial institutions and bodies of the European Union;

44. Encourages the Commission to promote policies which can help companies in the financial sector in today's economic environment to value and manage a more balanced representation of men and women in the decision-making bodies;

45. Emphasises that corporate management and remuneration policies must comply with and foster the principles of wage parity and equal treatment of women and men established by the Treaties and by EU directives;

Remuneration

46. Believes that remuneration policies must be based on the long-term performance of the individual and their firm to ensure remuneration policies do not contribute to excessive risk-taking, and that remuneration policies or payments should never undermine the stability of a firm;

47. Welcomes the changes to remuneration policy that have already been introduced by financial institutions, whereby bonuses are linked to the long-term success of the business and only paid out after three years at the earliest; also welcomes the fact that it is possible to demand repayment of bonuses if economic objectives have not been met;

48. Stresses that all share options must be properly disclosed and have vesting periods of at least three years; considers that greater use should be made of contingent capital instruments rather than shares, as they have less conflict of interest in inducing short termism;

49. Notes that the issue of remuneration in financial institutions has been dealt with in CRD III;

50. Stresses the importance of a strict remuneration policy as foreseen in the Capital Requirements Directive (CRD III) and Solvency II; expects these and other existing legislative measures to be rapidly implemented between 2011 and 2013; calls upon the Commission to publish an evaluation report in 2015;

51. Acknowledges that structural approaches differ among Member States; encourages practices which strengthen corporate governance according to the legal form, size, nature, complexity and business model of the financial institution;

52. Notes that the application of existing recommendations for the remuneration of directors of listed companies is neither uniform nor satisfactory; calls therefore on the Commission to come forward with legislation at EU level on remuneration for directors of listed companies in order to ensure that the structure of remuneration in listed companies does not encourage excessive risk-taking, as well as to ensure a level playing field in the EU;

53. Highlights in particular concerns that shareholders cannot and do not currently exercise due control over remuneration policies in financial institutions;

54. Insists that full transparency is necessary for shareholders to be able to conduct proper oversight of remuneration policies, and calls in particular for the publication of the number of staff in each institution receiving total remuneration greater than EUR 1 million, in bands of at least EUR 1 million;

55. Is of the opinion that shareholders should help determine sustainable remuneration policies and should be given the opportunity to express their views on the remuneration policies, with the right to reject the remuneration policy defined by the remuneration committee at the general meeting;

Supervisors, auditors and institutions

56. Believes that an enhanced three-way dialogue between supervisors, auditors (both internal and external) and institutions would improve the likelihood of substantial or systemic risk being detected at an early stage; encourages supervisors, the European Systemic Risk Board, auditors and institutions to engage in open discussions and to increase the frequency of meetings in order to facilitate prudential supervision; further recommends that bilateral meetings take place between auditors and supervisors of major financial institutions; believes that it is the board and Internal Auditor's responsibility to ensure that necessary internal controls are in place to detect systemic risks and to establish a procedure for informing the board and supervisors of these risks in order to avoid negative consequences;

57. Stresses that the primary role of auditors should not be unduly compromised by the burden of extra duties, such as an examination and assessment of non-audit information that falls outside their area of expertise; believes auditors should report directly to supervisors when aware of something of material concern to supervision and should participate in pan-industry assessments of specific controls;

58. Insists that public authorities, including ESAs and national supervisors, must adhere to high standards of independence and corporate governance equivalents;

Shareholders and the AGM

59. Encourages institutional shareholders to take a more active role in holding the board and its strategy to account in an appropriate way and to reflect the long-term interests of their beneficiaries;

60. Calls for legislation requiring all those authorised to manage investments on behalf of third parties in the EU to state publicly whether or not they apply and disclose against a stewardship code; if so, which one and why, and if not why not;

61. Believes that significant transactions above a defined and proportionate size should require specific shareholder approval or be subject to an obligation to inform shareholders before the transaction can take effect, provided that involvement of the shareholders is feasible, the principle of confidentiality is met and the daily business of the financial institution is not undermined; ESMA may issue guidelines concerning the appropriate benchmark in consultation with the relevant national authorities;

62. Recognises that transparency is necessary with regard to related party transactions and that significant transactions which involve a related party should be notified to the listing authority and be accompanied by a letter from an independent adviser confirming that the transaction is fair and reasonable, or should be subject to a vote of shareholders with the related party being excluded from this vote; ESMA may issue guidelines concerning the appropriate benchmark in consultation with the relevant national authorities;

63. Calls for mandatory annual elections of each member of the board, for mandatory annual requests for approval of the board's policy or for discharge of the board at the AGM, with a view to making the board more accountable and encouraging a culture of greater responsibility;

64. Calls for an investigation of the inhibition on effective shareholder controls and for the removal of regulatory impediments to reasonable collaboration;

65. Calls for an electronic vote to be introduced in order to encourage shareholders to engage in the corporate governance of financial institutions;

66. Takes the view that all limited partnerships should be free to stipulate in their statutes whether their partners may remain anonymous or must be named and that, in the latter case, a law must be enacted to guarantee that their identities are in fact made public;

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67. Instructs its President to forward this resolution to the Council and the Commission.

Free trade agreement with India

P7_TA(2011)0224

European Parliament resolution of 11 May 2011 on the state of play in the EU-India Free Trade Agreement negotiations

(2012/C 377 E/03)

The European Parliament,

— having regard to the Organisation for Economic Cooperation and Development (OECD) Guidelines on Multinational Enterprises and the International Labour Organisation (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy,

— having regard to the Ministerial Declaration of the Fourth Session of the WTO Ministerial Conference, adopted on 14 November 2001 in Doha, and in particular to paragraph 44 thereof, on Special and Differential Treatment (SDT),

— having regard to its resolution of 29 September 2005 on EU-India relations: A Strategic Partnership ([1]),

— having regard to the Commission communication of 4 October 2006 entitled 'Global Europe: Competing in the World. A contribution to the EU's Growth and Jobs Strategy' (COM(2006)0567),

— having regard to its resolution of 26 March 2009 on an EU-India Free Trade Agreement ([2]),

— having regard to its resolution of 12 July 2007 on the TRIPS Agreement and access to medicines ([3]),

— having regard to its resolution of 22 May 2007 on Global Europe - external aspects of competitiveness ([4]),

([1]) OJ C 227 E, 21.9.2006, p. 589.
([2]) OJ C 117 E, 6.5.2010, p. 166.
([3]) OJ C 175 E, 10.7.2008, p. 591.
([4]) OJ C 102 E, 24.4.2008, p. 128.