

EU Initiatives in the Corporate Governance Area – Some Main Issues

Professor, dr. jur. Jan Schans Christensen,
University of Copenhagen Faculty of Law

Background

- History: Texaco – CalPERS
- Cadbury and the development of codes of conduct and other non-binding norms
- OECD
- The role of the EU
- The High Level Group of Company Law Experts

Background – cont'd

- Shifting the focus: Enron and the Sarbanes-Oxley Act
- Considerable political pressure for reforms
- EU action plan expected soon

High Level Group:

- Basic question: How do we create the best possible framework for European companies to become efficient and competitive?
- We should focus particularly on barriers to cross-border activities and transactions
- Harmonisation may not always be the right answer to the question

Corporate Governance

- Corporate governance is not just a question of adopting codes of best practice
- Transparency and disclosure are important elements
- Facilitating shareholder influence is of key importance
- Monitoring management is crucial

Corporate Governance

- Listed companies should include a corporate governance statement in their annual report
- Listed companies should use their web site for communication purposes
- Listed companies should offer shareholders the right to vote in abstentia

Corporate Governance

- Member states should not prevent general meetings by use of electronic means
- Abandoning physical meetings altogether should require shareholder vote
- Cross-border voting should be facilitated
- The right to ask questions and submit proposals should be protected
- Institutional investors to disclose policy

Corporate Governance

- Listed companies to ensure nomination of board members and auditors by a majority of independent persons
- Choice for listed companies between one-tier and two-tier management structure
- Annual report to include information on the composition of the board and on board members' qualifications and other board memberships

Corporate Governance

- Right of inspection should apply in the EU
- Company's policy for management remuneration should be set out in the annual report and included as an item on the agenda for the annual general meeting
- Remuneration of individual directors should be disclosed in the annual report
- Share-based remuneration programs should be submitted for shareholder approval

Corporate Governance

- Annual costs related to share grant and share option programs would have to be accounted for in the annual report
- The board is responsible collectively for financial statements
- A wrongful trading rule should apply in EU
- Disqualification should be considered as a sanction

Corporate Governance

- The company's monitoring of the auditing should be carried out by a majority of independent persons (if deemed appropriate through an audit committee)
- EU must not issue a corporate governance code, but focus on co-ordinating the efforts by codemakers in the member states
- Member states should point at a relevant code – a "comply or explain" principle should apply

Concluding remarks

- The initiatives are with the EU Commission
- The Report by the High Level Group has been well received by many
- The European politicians will have to decide how far to go